

(2) A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the banking office;

(3) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary;

(4) Tamper-resistant locks on exterior doors and exterior windows that may be opened; and

(5) Such other devices as the security officer determines to be appropriate, taking into consideration:

(i) The incidence of crimes against financial institutions in the area;

(ii) The amount of currency or other valuables exposed to robbery, burglary, and larceny;

(iii) The distance of the banking office from the nearest responsible law enforcement officers;

(iv) The cost of the security devices;

(v) Other security measures in effect at the banking office; and

(vi) The physical characteristics of the structure of the banking office and its surroundings.

#### § 326.4 Reports.

The security officer for each insured nonmember bank shall report at least annually to the bank's board of directors on the implementation, administration, and effectiveness of the security program.

### Subpart B—Procedures for Monitoring Bank Security Act Compliance

#### § 326.8 Bank Security Act compliance.

(a) *Purpose.* This subpart is issued to assure that all insured nonmember banks as defined in 12 CFR 326.1 establish and maintain procedures reasonably designed to assure and monitor their compliance with the requirements of subchapter II of chapter 53 of title 31, United States Code, and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR Chapter X.

(b) *Compliance procedures—(1) Program requirement.* Each bank shall develop and provide for the continued administration of a program reasonably de-

signed to assure and monitor compliance with recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, and the implementing regulations issued by the Department of Treasury at 31 CFR Chapter X. The compliance program shall be written, approved by the bank's board of directors, and noted in the minutes.

(2) *Customer identification program.* Each bank is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the FDIC and the Department of the Treasury at 31 CFR 1020.220.

(c) *Contents of compliance program.* The compliance program shall, at a minimum:

(1) Provide for a system of internal controls to assure ongoing compliance;

(2) Provide for independent testing for compliance to be conducted by bank personnel or by an outside party;

(3) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and

(4) Provide training for appropriate personnel.

[76 FR 14793, Mar. 18, 2011, as amended at 77 FR 30371, May 23, 2012]

## PART 327—ASSESSMENTS

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## § 327.1

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#### Subpart C—Implementation of Dividend Requirements

- 327.50 Dividends.

AUTHORITY: 12 U.S.C. 1441, 1813, 1815, 1817–19, 1821.

SOURCE: 54 FR 51374, Dec. 15, 1989, unless otherwise noted.

#### Subpart A—In General

SOURCE: Sections 327.1 through 327.8 appear at 71 FR 69277, Nov. 30, 2006, unless otherwise noted.

#### § 327.1 Purpose and scope.

(a) *Scope.* This part 327 applies to any insured depository institution, including any insured branch of a foreign bank.

(b) *Purpose.* (1) Except as specified in paragraph (b)(2) of this section, this part 327 sets forth the rules for:

- (i) The time and manner of filing certified statements by insured depository institutions;
- (ii) The time and manner of payment of assessments by such institutions;
- (iii) The payment of assessments by depository institutions whose insured status has terminated;
- (iv) The classification of depository institutions for risk; and
- (v) The processes for review of assessments.

(2) Deductions from the assessment base of an insured branch of a foreign bank are stated in subpart B part 347 of this chapter.

#### § 327.2 Certified statements.

(a) *Required.* (1) The certified statement shall also be known as the quarterly certified statement invoice. Each

insured depository institution shall file and certify its quarterly certified statement invoice in the manner and form set forth in this section.

(2) The quarterly certified statement invoice shall reflect the institution's risk assignment, assessment base, assessment computation, and assessment amount, for each quarterly assessment period.

(b) *Availability and access.* (1) The Corporation shall make available to each insured depository institution via the FDIC's e-business Web site *FDICconnect* a quarterly certified statement invoice each assessment period.

(2) Insured depository institutions shall access their quarterly certified statement invoices via *FDICconnect*, unless the FDIC provides notice to insured depository institutions of a successor system. In the event of a contingency, the FDIC may employ an alternative means of delivering the quarterly certified statement invoices. A quarterly certified statement invoice delivered by any alternative means will be treated as if it had been downloaded from *FDICconnect*.

(3) Institutions that do not have Internet access may request a renewable one-year exemption from the requirement that quarterly certified statement invoices be accessed through *FDICconnect*. Any exemption request must be submitted in writing to the Manager of the Assessments Section.

(4) Each assessment period, the FDIC will provide courtesy e-mail notification to insured depository institutions indicating that new quarterly certified statement invoices are available and may be accessed on *FDICconnect*. E-mail notification will be sent to all individuals with *FDICconnect* access to quarterly certified statement invoices.

(5) E-mail notification may be used by the FDIC to communicate with insured depository institutions regarding quarterly certified statement invoices and other assessment-related matters.

(c) *Review by institution.* The president of each insured depository institution, or such other officer as the institution's president or board of directors or trustees may designate, shall review the information shown on each quarterly certified statement invoice.

(d) *Retention by institution.* If the appropriate officer of the insured depository institution agrees that, to the best of his or her knowledge and belief, the information shown on the quarterly certified statement invoice is true, correct, and complete and in accordance with the Federal Deposit Insurance Act and the regulations issued under it, the institution shall pay the amount specified on the quarterly certified statement invoice and shall retain it in the institution's files for three years as specified in section 7(b)(4) of the Federal Deposit Insurance Act.

(e) *Amendment by institution.* If the appropriate officer of the insured depository institution determines that, to the best of his or her knowledge and belief, the information shown on the quarterly certified statement invoice is not true, correct, and complete and in accordance with the Federal Deposit Insurance Act and the regulations issued under it, the institution shall pay the amount specified on the quarterly certified statement invoice, and may:

(1) Amend its report of condition, or other similar report, to correct any data believed to be inaccurate on the quarterly certified statement invoice; amendments to such reports timely filed under section 7(g) of the Federal Deposit Insurance Act but not permitted to be made by an institution's primary federal regulator may be filed with the FDIC for consideration in determining deposit insurance assessments; or

(2) Amend and sign its quarterly certified statement invoice to correct a calculation believed to be inaccurate and return it to the FDIC by the applicable payment date specified in § 327.3(b)(2).

(f) *Certification.* Data used by the Corporation to complete the quarterly certified statement invoice has been previously attested to by the institution in its reports of condition, or other similar reports, filed with the institution's primary federal regulator. When an insured institution pays the amount shown on the quarterly certified statement invoice and does not correct that invoice as provided in paragraph (e) of this section, the information on that

invoice shall be deemed true, correct, complete, and certified for purposes of paragraph (a) of this section and section 7(c) of the Federal Deposit Insurance Act.

(g) *Requests for revision of assessment computation.* (1) The timely filing of an amended report of condition or other similar report under paragraph (e)(1) of this section, or the timely filing of an amended quarterly certified statement invoice under paragraph (e)(2), that will result in a change to deposit insurance assessments owed or paid by an insured depository institution, shall be treated as a timely filed request for revision of computation of quarterly assessment payment under § 327.3(f).

(2) The assessment rate on the quarterly certified statement invoice shall be amended only if it is inconsistent with the assessment risk assignment(s) provided to the institution by the Corporation for the assessment period in question pursuant to § 327.4(a). Agreement with the assessment rate shall not be deemed to constitute agreement with the assessment risk assignment. An institution may request review of an assessment risk assignment it believes to be incorrect pursuant to § 327.4(c).

### § 327.3 Payment of assessments.

(a) *Required*—(1) *In general.* Each insured depository institution shall pay to the Corporation for each assessment period an assessment determined in accordance with this part 327.

(2) *Notice of designated deposit account.* For the purpose of making such payments, each insured depository institution shall designate a deposit account for direct debit by the Corporation. No later than 30 days prior to the next payment date specified in paragraph (b)(2) of this section, each institution shall provide notice to the Corporation via FDICconnect of the account designated, including all information and authorizations needed by the Corporation for direct debit of the account. After the initial notice of the designated account, no further notice is required unless the institution designates a different account for assessment debit by the Corporation, in which case the requirements of the preceding sentence apply.

(3) *Transition Rule for Financing Corporation (FICO) Payments.* Quarterly FICO payments shall be collected by the FDIC without interruption during the assessment system transitional period in 2007. All insured depository institutions shall make scheduled quarterly FICO payments on January 2, 2007 (unless prepaid on December 30, 2006), and March 30, 2007, based upon, respectively, their September 30, 2006, and December 31, 2006 reported assessment bases, which shall be the final assessment bases calculated pursuant to 12 CFR 327.5(a) and (b) (2006). Simultaneous collection of deposit insurance assessments and FICO assessments will resume in June of 2007, based on the March 31, 2007 reported assessment base.

(b) *Assessment payment*—(1) *Quarterly certified statement invoice.* Starting with the first assessment period of 2007, no later than 15 days prior to the payment date specified in paragraph (b)(2) of this section, the Corporation will provide to each insured depository institution a quarterly certified statement invoice showing the amount of the assessment payment due from the institution for the prior quarter (net of credits or dividends, if any), and the computation of that amount. Subject to paragraph (e) of this section, the invoiced amount on the quarterly certified statement invoice shall be the product of the following: the assessment base of the institution for the prior quarter computed in accordance with § 327.5 multiplied by the institution's rate for that prior quarter as assigned to the institution pursuant to §§ 327.4(a) and 327.9.

(2) *Quarterly payment date and manner.* The Corporation will cause the amount stated in the applicable quarterly certified statement invoice to be directly debited on the appropriate payment date from the deposit account designated by the insured depository institution for that purpose, as follows:

(i) In the case of the assessment payment for the quarter that begins on January 1, the payment date is the following June 30;

(ii) In the case of the assessment payment for the quarter that begins on April 1, the payment date is the following September 30;

(iii) In the case of the assessment payment for the quarter that begins on July 1, the payment date is the following December 30; and

(iv) In the case of the assessment payment for the quarter that begins on October 1, the payment date is the following March 30.

(c) *Necessary action, sufficient funding by institution.* Each insured depository institution shall take all actions necessary to allow the Corporation to debit assessments from the insured depository institution's designated deposit account. Each insured depository institution shall, prior to each payment date indicated in paragraph (b)(2) of this section, ensure that funds in an amount at least equal to the amount on the quarterly certified statement invoice are available in the designated account for direct debit by the Corporation. Failure to take any such action or to provide such funding of the account shall be deemed to constitute nonpayment of the assessment. Penalties for failure to timely pay assessments are provided for at 12 CFR 308.132(c)(3)(v).

(d) *Business days.* If a payment date specified in paragraph (b)(2) falls on a date that is not a business day, the applicable date shall be the previous business day.

(e) *Payment adjustments in succeeding quarters.* Quarterly certified statement invoices provided by the Corporation may reflect adjustments, initiated by the Corporation or an institution, resulting from such factors as amendments to prior quarterly reports of condition, retroactive revision of the institution's assessment risk assignment, and revision of the Corporation's assessment computations for prior quarters.

(f) *Request for revision of computation of quarterly assessment payment*—(1) *In general.* An institution may submit a written request for revision of the computation of the institution's quarterly assessment payment as shown on the quarterly certified statement invoice in the following circumstances:

(i) The institution disagrees with the computation of the assessment base as stated on the quarterly certified statement invoice;

(ii) The institution determines that the rate applied by the Corporation is inconsistent with the assessment risk assignment(s) provided to the institution in writing by the Corporation for the assessment period for which the payment is due; or

(iii) The institution believes that the quarterly certified statement invoice does not fully or accurately reflect adjustments provided for in paragraph (e) of this section.

(2) *Inapplicability.* This paragraph (f) is not applicable to requests for review of an institution's assessment risk assignment, which are covered by § 327.4(c) of this part.

(3) *Requirements.* Any such request for revision must be submitted within 90 days from the date the computation being challenged appears on the institution's quarterly certified statement invoice. The request for revision shall be submitted to the Manager of the Assessments Section and shall provide documentation sufficient to support the change sought by the institution. If additional information is requested by the Corporation, such information shall be provided by the institution within 21 days of the date of the request for additional information. Any institution submitting a timely request for revision will receive written notice from the Corporation regarding the outcome of its request. Upon completion of a review, the DOF Director (or designee) shall promptly notify the institution in writing of his or her determination of whether revision is warranted. If the institution requesting revision disagrees with that determination, it may appeal to the FDIC's Assessment Appeals Committee. Notice of the procedures applicable to appeals will be included with the written determination.

(g) *Quarterly certified statement invoice unavailable.* Any institution whose quarterly certified statement invoice is unavailable on FDICconnect by the fifteenth day of the month in which the payment is due shall promptly notify the Corporation. Failure to provide prompt notice to the Corporation shall not affect the institution's obligation to make full and timely assessment payment. Unless otherwise directed by the Corporation, the institution shall

preliminarily pay the amount shown on its quarterly certified statement invoice for the preceding assessment period, subject to subsequent correction.

[54 FR 51374, Dec. 15, 1989, as amended at 74 FR 9550, Mar. 4, 2009]

#### § 327.4 Assessment rates.

(a) *Assessment risk assignment.* For the purpose of determining the annual assessment rate for insured depository institutions under § 327.9, each insured depository institution will be provided an assessment risk assignment. Notice of an institution's current assessment risk assignment will be provided to the institution with each quarterly certified statement invoice. Adjusted assessment risk assignments for prior periods may also be provided by the Corporation. Notice of the procedures applicable to reviews will be included with the notice of assessment risk assignment provided pursuant to paragraph (a) of this section.

(b) *Payment of assessment at rate assigned.* Institutions shall make timely payment of assessments based on the assessment risk assignment in the notice provided to the institution pursuant to paragraph (a) of this section. Timely payment is required notwithstanding any request for review filed pursuant to paragraph (c) of this section. Assessment risk assignments remain in effect for future assessment periods until changed. If the risk assignment in the notice is subsequently changed, any excess assessment paid by the institution will be credited by the Corporation, with interest, and any additional assessment owed shall be paid by the institution, with interest, in the next assessment payment after such subsequent assignment or change. Interest payable under this paragraph shall be determined in accordance with § 327.7.

(c) *Requests for review.* An institution that believes any assessment risk assignment provided by the Corporation pursuant to paragraph (a) of this section is incorrect and seeks to change it must submit a written request for review of that risk assignment. An institution cannot request review through this process of the CAMELS ratings assigned by its primary federal regulator or challenge the appropriateness of any

such rating; each federal regulator has established procedures for that purpose. An institution may also request review of a determination by the FDIC to assess the institution as a large, highly complex, or a small institution (§ 327.9(e)(3)) or a determination by the FDIC that the institution is a new institution (§ 327.9(f)(5)). Any request for review must be submitted within 90 days from the date the assessment risk assignment being challenged pursuant to paragraph (a) of this section appears on the institution's quarterly certified statement invoice. The request shall be submitted to the Corporation's Director of the Division of Insurance and Research in Washington, DC, and shall include documentation sufficient to support the change sought by the institution. If additional information is requested by the Corporation, such information shall be provided by the institution within 21 days of the date of the request for additional information. Any institution submitting a timely request for review will receive written notice from the Corporation regarding the outcome of its request. Upon completion of a review, the Director of the Division of Insurance and Research (or designee) or the Director of the Division of Supervision and Consumer Protection (or designee) or any successor divisions, as appropriate, shall promptly notify the institution in writing of his or her determination of whether a change is warranted. If the institution requesting review disagrees with that determination, it may appeal to the FDIC's Assessment Appeals Committee. Notice of the procedures applicable to appeals will be included with the written determination.

(d) *Disclosure restrictions.* The portion of an assessment risk assignment provided to an institution by the Corporation pursuant to paragraph (a) of this section that reflects any supervisory evaluation or confidential information is deemed to be exempt information within the scope of § 309.5(g)(8) of this chapter and, accordingly, is governed by the disclosure restrictions set out at § 309.6 of this chapter.

(e) *Limited use of assessment risk assignment.* Any assessment risk assignment provided to a depository institution under this part 327 is for purposes

of implementing and operating the FDIC's risk-based assessment system. Unless permitted by the Corporation or otherwise required by law, no institution may state in any advertisement or promotional material, or in any other public place or manner, the assessment risk assignment provided to it pursuant to this part.

(f) *Effective date for changes to risk assignment.* Changes to an insured institution's risk assignment resulting from a supervisory ratings change become effective as of the date of written notification to the institution by its primary federal regulator or state authority of its supervisory rating (even when the CAMELS component ratings have not been disclosed to the institution), if the FDIC, after taking into account other information that could affect the rating, agrees with the rating. If the FDIC does not agree, the FDIC will notify the institution of the FDIC's supervisory rating; resulting changes to an insured institution's risk assignment become effective as of the date of written notification to the institution by the FDIC.

(g) *Designated Reserve Ratio.* The designated reserve ratio for the Deposit Insurance Fund is 2 percent.

[71 FR 69277, 69326, Nov. 30, 2006, as amended at 75 FR 79293, Dec. 20, 2010; 76 FR 10704, Feb. 25, 2011]

#### § 327.5 Assessment base.

(a) *Assessment base for all insured depository institutions.* Except as provided in paragraphs (b), (c), and (d) of this section, the assessment base for an insured depository institution shall equal the average consolidated total assets of the insured depository institution during the assessment period minus the average tangible equity of the insured depository institution during the assessment period.

(1) *Average consolidated total assets defined and calculated.* Average consolidated total assets are defined in the schedule of quarterly averages in the Consolidated Reports of Condition and Income, using either a daily averaging method or a weekly averaging method as described in paragraphs (a)(1)(i) or (ii) of this section. The amounts to be reported as daily averages are the sum of the gross amounts of consolidated

total assets for each calendar day during the quarter divided by the number of calendar days in the quarter. The amounts to be reported as weekly averages are the sum of the gross amounts of consolidated total assets for each Wednesday during the quarter divided by the number of Wednesdays in the quarter. For days that an office of the reporting institution (or any of its subsidiaries or branches) is closed (e.g., Saturdays, Sundays, or holidays), the amounts outstanding from the previous business day will be used. An office is considered closed if there are no transactions posted to the general ledger as of that date. For institutions that begin operating during the calendar quarter, the amounts to be reported as daily averages are the sum of the gross amounts of consolidated total assets for each calendar day the institution was operating during the quarter divided by the number of calendar days the institution was operating during the quarter.

(i) *Institutions that must report average consolidated total assets using a daily averaging method.* All insured depository institutions that report \$1 billion or more in quarter-end consolidated total assets on their March 31, 2011 Consolidated Report of Condition and Income or Thrift Financial Report (or successor report), and all institutions that become insured after March 31, 2011, shall report average consolidated total assets as of the close of business for each day of the calendar quarter.

(ii) *Institutions that may report average consolidated total assets using a weekly averaging method.* All insured depository institutions that report less than \$1 billion in quarter-end consolidated total assets on their March 31, 2011, Consolidated Report of Condition and Income or Thrift Financial Report may report average consolidated total assets as an average of the balances as of the close of business on each Wednesday during the calendar quarter, or may at any time opt permanently to report average consolidated total assets on a daily basis as set forth in paragraph (a)(1)(i) of this section. Once an institution that reports average consolidated total assets using a weekly average reports average consolidated total assets equal to or greater

than \$1 billion for two consecutive quarters, it shall permanently report average consolidated total assets using daily averaging starting in the next quarter.

(iii) *Mergers and consolidations.* The average calculation of the assets of the surviving or resulting institution in a merger or consolidation shall include the assets of all the merged or consolidated institutions for the days in the quarter prior to the merger or consolidation, whether reported by the daily or weekly method.

(2) *Average tangible equity defined and calculated.* Tangible equity is defined as Tier 1 capital.

(i) *Calculation of average tangible equity.* Except as provided in paragraph (a)(2)(ii) of this section, average tangible equity shall be calculated using monthly averaging. Monthly averaging means the average of the three month-end balances within the quarter.

(ii) *Alternate calculation of average tangible equity.* Institutions that report less than \$1 billion in quarter-end consolidated total assets on their March 31, 2011 Consolidated Reports of Condition and Income or Thrift Financial Reports may report average tangible equity using an end-of-quarter balance or may at any time opt permanently to report average tangible equity using a monthly average balance. An institution that reports average tangible equity using an end-of-quarter balance and reports average daily or weekly consolidated assets of \$1 billion or more for two consecutive quarters shall permanently report average tangible equity using monthly averaging starting in the next quarter. Newly insured institutions shall report using monthly averaging.

(iii) *Calculation of average tangible equity for the surviving institution in a merger or consolidation.* For the surviving institution in a merger or consolidation, Tier 1 capital shall be calculated as if the merger occurred on the first day of the quarter in which the merger or consolidation occurred.

(3) *Consolidated subsidiaries—*  
(i) *Reporting for insured depository institutions with consolidated subsidiaries that are not insured depository institutions.* For insured institutions with consolidated subsidiaries that are not insured

depository institutions, assets, including assets eliminated in consolidation, shall be calculated using a daily or weekly averaging method, corresponding to the daily or weekly averaging requirement of the parent institution. The Consolidated Reports of Condition and Income instructions in effect for the quarter for which data is being reported shall govern calculation of the average amount of subsidiaries' assets, including those assets eliminated in consolidation. An insured depository institution that reports average tangible equity using a monthly averaging method and that has subsidiaries that are not insured depository institutions shall use monthly average reporting for the subsidiaries. The monthly average data for these subsidiaries, however, may be calculated for the current quarter or for the prior quarter consistent with the method used to report average consolidated total assets and in conformity with Consolidated Reports of Condition and Income requirements. Once the method of reporting the subsidiaries' assets and tangible equity is chosen, however (current quarter or prior quarter), insured depository institutions cannot change the reporting method from quarter to quarter. An institution that reports consolidated assets and tangible equity using data for the prior quarter may switch to concurrent reporting on a permanent basis.

(ii) *Reporting for insured depository institutions with consolidated insured depository subsidiaries.* Insured depository institutions that consolidate with other insured depository institutions for financial reporting purposes shall report for the parent and for each subsidiary individually, daily average consolidated total assets or weekly average consolidated total assets, as appropriate under paragraph (a)(1)(i) or (ii) above, and tangible equity, without consolidating their insured depository institution subsidiaries into the calculations. Investments in insured depository institution subsidiaries should be included in total assets using the equity method of accounting.

(b) *Assessment base for banker's banks—(1) Banker's bank defined.* A banker's bank for purposes of calculating deposit insurance assessments

shall meet the definition of banker's bank as that term is used in 12 U.S.C. 24. Banker's banks that have funds from government capital infusion programs (such as TARP and the Small Business Lending Fund), and stock owned by the FDIC resulting from banks failures, as well as non-bank-owned stock resulting from equity compensation programs, are not thereby excluded from the definition of banker's banks.

(2) *Self-certification.* Institutions that meet the requirements of paragraph (b)(1) of this section shall so certify to that effect each quarter on the Consolidated Reports of Condition and Income or Thrift Financial Report or successor report.

(3) *Assessment base calculation for banker's banks.* A banker's bank shall pay deposit insurance assessments on its assessment base as calculated in paragraph (a) of this section provided that it conducts 50 percent or more of its business with entities other than its parent holding company or entities other than those controlled (control has the same meaning as in section 3(w)(5) of the FDI Act) either directly or indirectly by its parent holding company. The assessment base will exclude the average (daily or weekly depending on how the institution calculates its average consolidated total assets) amount of reserve balances passed through to the Federal Reserve, the average amount of reserve balances held at the Federal Reserve for its own account (including all balances due from the Federal Reserve as described in the instructions to line 4 of Schedule RC-A of the Consolidated Report of Condition and Income as of December 31, 2010), and the average amount of the institution's federal funds sold, but in no case shall the amount excluded exceed the sum of the bank's average amount of total deposits of commercial banks and other depository institutions in the United States and the average amount of its federal funds purchased.

(c) *Assessment base for custodial banks—(1) Custodial bank defined.* A custodial bank for purposes of calculating deposit insurance assessments shall be an insured depository institution with



previous calendar-year trust assets (fiduciary and custody and safekeeping assets, as described in the instructions to Schedule RC-T of the Consolidated Report of Condition and Income) of at least \$50 billion or an insured depository institution that derived more than 50 percent of its total revenue (interest income plus non-interest income) from trust activity over the previous calendar year.

(2) *Assessment base calculation for custodial banks.* A custodial bank shall pay deposit insurance assessments on its assessment base as calculated in paragraph (a) of this section, but the FDIC will exclude from that assessment base the daily or weekly average (depending on how the bank reports its average consolidated total assets) of all asset types described in the instructions to lines 1, 2, and 3 of Schedule RC of the Consolidated Report of Condition and Income with a standardized approach risk weight of 0 percent, regardless of maturity, plus 50 percent of those asset types described in the instructions to lines 1, 2, and 3 of Schedule RC of the Consolidated Report of Condition and Income, with a standardized approach risk-weight greater than 0 and up to and including 20 percent, regardless of maturity, subject to the limitation that the daily or weekly average (depending on how the bank reports its average consolidated total assets) value of all assets that serve as the basis for a deduction under this section cannot exceed the daily or weekly average value of those deposits that are classified as transaction accounts in the instructions to Schedule RC-E of the Consolidated Report of Condition and Income and that are identified by the institution as being directly linked to a fiduciary or custodial and safekeeping account asset.

(d) *Assessment base for insured branches of foreign banks.* Average consolidated total assets for an insured branch of a foreign bank are defined as total assets of the branch (including net due from related depository institutions) in accordance with the schedule of assets and liabilities in the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks as of the assessment period for which the assessment is being cal-

culated, but measured using the definition for reporting total assets in the schedule of quarterly averages in the Consolidated Reports of Condition and Income, and calculated using the appropriate daily or weekly averaging method under paragraph (a)(1)(i) or (ii) of this section. Tangible equity for an insured branch of a foreign bank is eligible assets (determined in accordance with § 347.210 of the FDIC's regulations) less the book value of liabilities (exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly owned subsidiaries) calculated on a monthly or end-of-quarter basis, according to the branch's size.

(e) *Newly insured institutions.* A newly insured institution shall pay an assessment for the assessment period during which it became insured. The FDIC will prorate the newly insured institution's assessment amount to reflect the number of days it was insured during the period.

[76 FR 10704, Feb. 25, 2011, as amended at 79 FR 70437, Nov. 26, 2014]

### § 327.6 Mergers and consolidations; other terminations of insurance.

(a) *Final quarterly certified invoice for acquired institution.* An institution that is not the resulting or surviving institution in a merger or consolidation must file a report of condition for every assessment period prior to the assessment period in which the merger or consolidation occurs. The surviving or resulting institution shall be responsible for ensuring that these reports of condition are filed and shall be liable for any unpaid assessments on the part of the institution that is not the resulting or surviving institution.

(b) *Assessment for quarter in which the merger or consolidation occurs.* For an assessment period in which a merger or consolidation occurs, consolidated total assets for the surviving or resulting institution shall include the consolidated total assets of all insured depository institutions that are parties to the merger or consolidation as if the merger or consolidation occurred on the first day of the assessment period. Tier 1 capital shall be reported in the same manner.

(c) *Other termination.* When the insured status of an institution is terminated, and the deposit liabilities of such institution are not assumed by another insured depository institution—

(1) *Payment of assessments; quarterly certified statement invoices.* The depository institution whose insured status is terminating shall continue to file and certify its quarterly certified statement invoice and pay assessments for the assessment period its deposits are insured. Such institution shall not be required to certify its quarterly certified statement invoice and pay further assessments after it has paid in full its deposit liabilities and the assessment to the Corporation required to be paid for the assessment period in which its deposit liabilities are paid in full, and after it, under applicable law, goes out of business or transfers all or substantially all of its assets and liabilities to other institutions or otherwise ceases to be obliged to pay subsequent assessments.

(2) *Payment of deposits; certification to Corporation.* When the deposit liabilities of the depository institution have been paid in full, the depository institution shall certify to the Corporation that the deposit liabilities have been paid in full and give the date of the final payment. When the depository institution has unclaimed deposits, the certification shall further state the amount of the unclaimed deposits and the disposition made of the funds to be held to meet the claims. For assessment purposes, the following will be considered as payment of the unclaimed deposits:

(i) The transfer of cash funds in an amount sufficient to pay the unclaimed and unpaid deposits to the public official authorized by law to receive the same; or

(ii) If no law provides for the transfer of funds to a public official, the transfer of cash funds or compensatory assets to an insured depository institution in an amount sufficient to pay the unclaimed and unpaid deposits in consideration for the assumption of the deposit obligations by the insured depository institution.

(3) *Notice to depositors.* (i) The depository institution whose insured status is

terminating shall give sufficient advance notice of the intended transfer to the owners of the unclaimed deposits to enable the depositors to obtain their deposits prior to the transfer. The notice shall be mailed to each depositor and shall be published in a local newspaper of general circulation. The notice shall advise the depositors of the liquidation of the depository institution, request them to call for and accept payment of their deposits, and state the disposition to be made of their deposits if they fail to promptly claim the deposits.

(ii) If the unclaimed and unpaid deposits are disposed of as provided in paragraph (c)(2)(i) of this section, a certified copy of the public official's receipt issued for the funds shall be furnished to the Corporation.

(iii) If the unclaimed and unpaid deposits are disposed of as provided in paragraph (c)(2)(ii) of this section, an affidavit of the publication and of the mailing of the notice to the depositors, together with a copy of the notice and a certified copy of the contract of assumption, shall be furnished to the Corporation.

(4) *Notice to Corporation.* The depository institution whose insured status is terminating shall advise the Corporation of the date on which it goes out of business or transfers all or substantially all of its assets and liabilities to other institutions or otherwise ceases to be obligated to pay subsequent assessments and the method whereby the termination has been effected.

(d) *Resumption of insured status before insurance of deposits ceases.* If a depository institution whose insured status has been terminated is permitted by the Corporation to continue or resume its status as an insured depository institution before the insurance of its deposits has ceased, the institution will be deemed, for assessment purposes, to continue as an insured depository institution and must thereafter file and certify its quarterly certified statement invoices and pay assessments as though its insured status had not been terminated. The procedure for applying for the continuance or resumption of insured status is set forth in §303.248 of this chapter.

[76 FR 10706, Feb. 25, 2011]

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### § 327.7 Payment of interest on assessment underpayments and overpayments.

(a) *Payment of interest*—(1) *Payment by institutions*. Each insured depository institution shall pay interest to the Corporation on any underpayment of the institution's assessment.

(2) *Payment by Corporation*. The Corporation will pay interest on any overpayment by the institution of its assessment.

(3) *Accrual of interest*. (i) Interest on an amount owed to or by the Corporation for the underpayment or overpayment of an assessment shall accrue interest at the relevant interest rate.

(ii) Interest on an amount specified in paragraph (a)(3)(i) of this section shall begin to accrue on the day following the regular payment date, as provided for in § 327.3(b)(2), for the amount so overpaid or underpaid, provided, however, that interest shall not begin to accrue on any overpayment until the day following the date such overpayment was received by the Corporation. Interest shall continue to accrue through the date on which the overpayment or underpayment (together with any interest thereon) is discharged.

(iii) The relevant interest rate shall be redetermined for each quarterly assessment interval. A quarterly assessment interval begins on the day following a regular payment date, as specified in § 327.3(b)(2), and ends on the immediately following regular payment date.

(b) *Interest rates*. (1) The relevant interest rate for a quarterly assessment interval that includes the month of January, April, July, and October, respectively, is the coupon equivalent yield of the average discount rate set on the 3-month Treasury bill at the last auction held by the United States Treasury Department during the preceding December, March, June, and September, respectively.

(2) The relevant interest rate for a quarterly assessment interval will apply to any amounts overpaid or underpaid on the payment date immediately prior to the beginning of the quarterly assessment interval. The relevant interest rate will also apply to any amounts owed for previous over-

payments or underpayments (including any interest thereon) that remain outstanding, after any adjustments to such overpayments or underpayments have been made thereon, at the end of the regular payment date immediately prior to the beginning of the quarterly assessment interval. Interest will be compounded daily.

### § 327.8 Definitions.

For the purpose of this part 327:

(a) *Deposits*. The term *deposit* has the meaning specified in section 3(l) of the Federal Deposit Insurance Act.

(b) *Quarterly report of condition*. The term *quarterly report of condition* means a report required to be filed pursuant to section 7(a)(3) of the Federal Deposit Insurance Act.

(c) *Assessment period*—*In general*. The term *assessment period* means a period beginning on January 1 of any calendar year and ending on March 31 of the same year, or a period beginning on April 1 of any calendar year and ending on June 30 of the same year; or a period beginning on July 1 of any calendar year and ending on September 30 of the same year; or a period beginning on October 1 of any calendar year and ending on December 31 of the same year.

(d) *Acquiring institution*. The term *acquiring institution* means an insured depository institution that assumes some or all of the deposits of another insured depository institution in a terminating transfer.

(e) *Small institution*. An insured depository institution with assets of less than \$10 billion as of December 31, 2006, and an insured branch of a foreign institution shall be classified as a small institution. If, after December 31, 2006, an institution classified as large under paragraph (f) of this section (other than an institution classified as large for purposes of § 327.9(e)) reports assets of less than \$10 billion in its quarterly reports of condition for four consecutive quarters, the FDIC will reclassify the institution as small beginning the following quarter.

(f) *Large institution*. An institution classified as large for purposes of § 327.9(e) or an insured depository institution with assets of \$10 billion or more as of December 31, 2006 (other than an insured branch of a foreign

bank or a highly complex institution) shall be classified as a large institution. If, after December 31, 2006, an institution classified as small under paragraph (e) of this section reports assets of \$10 billion or more in its quarterly reports of condition for four consecutive quarters, the FDIC will reclassify the institution as large beginning the following quarter.

(g) *Highly complex institution.* (1) A highly complex institution is:

(i) An insured depository institution (excluding a credit card bank) that has had \$50 billion or more in total assets for at least four consecutive quarters that is controlled by a U.S. parent holding company that has had \$500 billion or more in total assets for four consecutive quarters, or controlled by one or more intermediate U.S. parent holding companies that are controlled by a U.S. holding company that has had \$500 billion or more in assets for four consecutive quarters; or

(ii) A processing bank or trust company.

(2) Control has the same meaning as in section 3(w)(5) of the FDI Act. A U.S. parent holding company is a parent holding company incorporated or organized under the laws of the United States or any State, as the term “State” is defined in section 3(a)(3) of the FDI Act. If, after December 31, 2010, an institution classified as highly complex under paragraph (g)(1)(i) of this section falls below \$50 billion in total assets in its quarterly reports of condition for four consecutive quarters, or its parent holding company or companies fall below \$500 billion in total assets for four consecutive quarters, the FDIC will reclassify the institution beginning the following quarter. If, after December 31, 2010, an institution classified as highly complex under paragraph (a)(1)(ii) of this section falls below \$10 billion in total assets for four consecutive quarters, the FDIC will reclassify the institution beginning the following quarter.

(h) *CAMELS composite and CAMELS component ratings.* The terms *CAMELS composite ratings* and *CAMELS component ratings* shall have the same meaning as in the Uniform Financial Institutions Rating System as published by

the Federal Financial Institutions Examination Council.

(i) *ROCA supervisory ratings.* ROCA supervisory ratings rate risk management, operational controls, compliance, and asset quality.

(j) *New depository institution.* A new insured depository institution is a bank or savings association that has been federally insured for less than five years as of the last day of any quarter for which it is being assessed.

(k) *Established depository institution.* An established insured depository institution is a bank or savings association that has been federally insured for at least five years as of the last day of any quarter for which it is being assessed.

(1) *Merger or consolidation involving new and established institution(s).* Subject to paragraphs (k)(2), (3), (4), and (5) of this section and § 327.9(f)(3) and (4), when an established institution merges into or consolidates with a new institution, the resulting institution is a new institution unless:

(i) The assets of the established institution, as reported in its report of condition for the quarter ending immediately before the merger, exceeded the assets of the new institution, as reported in its report of condition for the quarter ending immediately before the merger; and

(ii) Substantially all of the management of the established institution continued as management of the resulting or surviving institution.

(2) *Consolidation involving established institutions.* When established institutions consolidate, the resulting institution is an established institution.

(3) *Grandfather exception.* If a new institution merges into an established institution, and the merger agreement was entered into on or before July 11, 2006, the resulting institution shall be deemed to be an established institution for purposes of this part.

(4) *Subsidiary exception.* Subject to paragraph (k)(5) of this section, a new institution will be considered established if it is a wholly owned subsidiary of:

(i) A company that is a bank holding company under the Bank Holding Company Act of 1956 or a savings and loan

holding company under the Home Owners' Loan Act, and:

(A) At least one eligible depository institution (as defined in 12 CFR 303.2(r)) that is owned by the holding company has been chartered as a bank or savings association for at least five years as of the date that the otherwise new institution was established; and

(B) The holding company has a composite rating of at least "2" for bank holding companies or an above average or "A" rating for savings and loan holding companies and at least 75 percent of its insured depository institution assets are assets of eligible depository institutions, as defined in 12 CFR 303.2(r); or

(ii) An eligible depository institution, as defined in 12 CFR 303.2(r), that has been chartered as a bank or savings association for at least five years as of the date that the otherwise new institution was established.

(5) *Effect of credit union conversion.* In determining whether an insured depository institution is new or established, the FDIC will include any period of time that the institution was a federally insured credit union.

(1) *Risk assignment.* For all small institutions and insured branches of foreign banks, risk assignment includes assignment to Risk Category I, II, III, or IV, and, within Risk Category I, assignment to an assessment rate or rates. For all large institutions and highly complex institutions, risk assignment includes assignment to an assessment rate or rates.

(m) *Unsecured debt.* For purposes of the unsecured debt adjustment as set forth in § 327.9(d)(1) and the depository institution debt adjustment as set forth in § 327.9(d)(2), unsecured debt shall include senior unsecured liabilities and subordinated debt.

(n) *Senior unsecured liability.* For purposes of the unsecured debt adjustment as set forth in § 327.9(d)(1) and the depository institution debt adjustment as set forth in § 327.9(d)(2), senior unsecured liabilities shall be the unsecured portion of other borrowed money as defined in the quarterly report of condition for the reporting period as defined in paragraph (b) of this section, but shall not include any senior unsecured debt that the FDIC has guaranteed

under the Temporary Liquidity Guarantee Program, 12 CFR part 370.

(o) *Subordinated debt.* For purposes of the unsecured debt adjustment as set forth in § 327.9(d)(1) and the depository institution debt adjustment as set forth in § 327.9(d)(2), subordinated debt shall be as defined in the quarterly report of condition for the reporting period; however, subordinated debt shall also include limited-life preferred stock as defined in the quarterly report of condition for the reporting period.

(p) *Long-term unsecured debt.* For purposes of the unsecured debt adjustment as set forth in § 327.9(d)(1) and the depository institution debt adjustment as set forth in § 327.9(d)(2), long-term unsecured debt shall be unsecured debt with at least one year remaining until maturity; however, any such debt where the holder of the debt has a redemption option that is exercisable within one year of the reporting date shall not be deemed long-term unsecured debt.

(q) *Reciprocal deposits.* Deposits that an insured depository institution receives through a deposit placement network on a reciprocal basis, such that: (1) for any deposit received, the institution (as agent for depositors) places the same amount with other insured depository institutions through the network; and (2) each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members.

(r) *Parent holding company.* A parent holding company has the same meaning as "depository institution holding company," as defined in § 3(w) of the FDI Act.

(s) *Processing bank or trust company.* A processing bank or trust company is an institution whose last three years' non-lending interest income, fiduciary revenues, and investment banking fees, combined, exceed 50 percent of total revenues (and its last three years' fiduciary revenues are non-zero), and whose total fiduciary assets total \$500 billion or more, and whose total assets for at least four consecutive quarters have been \$10 billion or more.

(t) *Credit card bank.* A credit card bank is a bank for which credit card receivables plus securitized receivables exceed 50 percent of assets plus securitized receivables.

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(u) *Control*—Control has the same meaning as in section 2 of the Bank Holding Company Act of 1956, 12 U.S.C. 1841(a)(2).

[54 FR 51374, Dec. 15, 1989, as amended at 74 FR 9551, Mar. 4, 2009; 76 FR 10707, Feb. 25, 2011]

### § 327.9 Assessment pricing methods.

(a) *Small institutions*—(1) *Risk Categories*. Each small insured depository institution shall be assigned to one of the following four Risk Categories based upon the institution's capital evaluation and supervisory evaluation as defined in this section.

(i) *Risk Category I*. Small institutions in Supervisory Group A that are Well Capitalized will be assigned to Risk Category I.

(ii) *Risk Category II*. Small institutions in Supervisory Group A that are Adequately Capitalized, and small institutions in Supervisory Group B that are either Well Capitalized or Adequately Capitalized will be assigned to Risk Category II.

(iii) *Risk Category III*. Small institutions in Supervisory Groups A and B that are Undercapitalized, and small institutions in Supervisory Group C that are Well Capitalized or Adequately Capitalized will be assigned to Risk Category III.

(iv) *Risk Category IV*. Small institutions in Supervisory Group C that are Undercapitalized will be assigned to Risk Category IV.

(2) *Capital evaluations*. Each small institution will receive one of the following three capital evaluations on the basis of data reported in the institution's Consolidated Reports of Condition and Income or Thrift Financial Report (or successor report, as appropriate) dated as of March 31 for the assessment period beginning the preceding January 1; dated as of June 30 for the assessment period beginning the preceding April 1; dated as of September 30 for the assessment period beginning the preceding July 1; and dated as of December 31 for the assessment period beginning the preceding October 1.

(i) *Well Capitalized*. A Well Capitalized institution is one that satisfies each of the following capital ratio standards: Total risk-based capital

ratio, 10.0 percent or greater; tier 1 risk-based capital ratio, 8.0 percent or greater; leverage ratio, 5.0 percent or greater; and common equity tier 1 capital ratio, 6.5 percent or greater.

(ii) *Adequately Capitalized*. An Adequately Capitalized institution is one that does not satisfy the standards of Well Capitalized in paragraph (a)(2)(i) of this section but satisfies each of the following capital ratio standards: Total risk-based capital ratio, 8.0 percent or greater; tier 1 risk-based capital ratio, 6.0 percent or greater; leverage ratio, 4.0 percent or greater; and common equity tier 1 capital ratio, 4.5 percent or greater.

(iii) *Undercapitalized*. An undercapitalized institution is one that does not qualify as either Well Capitalized or Adequately Capitalized under paragraphs (a)(2)(i) and (ii) of this section.

(3) *Supervisory evaluations*. Each small institution will be assigned to one of three Supervisory Groups based on the Corporation's consideration of supervisory evaluations provided by the institution's primary federal regulator. The supervisory evaluations include the results of examination findings by the primary federal regulator, as well as other information that the primary federal regulator determines to be relevant. In addition, the Corporation will take into consideration such other information (such as state examination findings, as appropriate) as it determines to be relevant to the institution's financial condition and the risk posed to the Deposit Insurance Fund. The three Supervisory Groups are:

(i) *Supervisory Group "A."* This Supervisory Group consists of financially sound institutions with only a few minor weaknesses;

(ii) *Supervisory Group "B."* This Supervisory Group consists of institutions that demonstrate weaknesses which, if not corrected, could result in significant deterioration of the institution and increased risk of loss to the Deposit Insurance Fund; and

(iii) *Supervisory Group "C."* This Supervisory Group consists of institutions that pose a substantial probability of loss to the Deposit Insurance Fund unless effective corrective action is taken.

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(4) *Financial ratios method.* A small insured depository institution in Risk Category I shall have its initial base assessment rate determined using the financial ratios method.

(i) Under the financial ratios method, each of six financial ratios and a weighted average of CAMELS component ratings will be multiplied by a corresponding pricing multiplier. The sum of these products will be added to a uniform amount. The resulting sum shall equal the institution's initial base assessment rate; provided, however, that no institution's initial base assessment rate shall be less than the minimum initial base assessment rate in effect for Risk Category I institutions for that quarter nor greater than the maximum initial base assessment rate in effect for Risk Category I institutions for that quarter. An institution's initial base assessment rate, subject to adjustment pursuant to paragraphs (d)(1), (2), and (3) of this section, as appropriate (resulting in the institution's total base assessment rate, which in no case can be lower than 50 percent of the institution's initial base assessment rate), and adjusted for the actual assessment rates set by the Board under § 327.10(f), will equal an institution's assessment rate. The six financial ratios are: Leverage ratio; Loans past due 30–89 days/gross assets; Nonperforming assets/gross assets; Net loan charge-offs/gross assets; Net income before taxes/risk-weighted assets; and the Adjusted brokered deposit ratio. The ratios are defined in Table A.1 of Appendix A to this subpart. The ratios will be determined for an assessment period based upon information contained in an institution's report of condition filed as of the last day of the assessment period as set out in paragraph (a)(2) of this section. The weighted average of CAMELS component ratings is created by multiplying each component by the following percentages and adding the products: Capital adequacy—25%, Asset quality—20%, Management—25%, Earnings—10%, Liquidity—10%, and Sensitivity to market risk—10%. The following table sets forth the initial values of the pricing multipliers:

| Risk measures *                                    | Pricing multipliers ** |
|--|------------------------|
| Leverage ratio .....                               | (0.056)                |
| Loans Past Due 30–89 Days/Gross Assets .....       | 0.575                  |
| Nonperforming Assets/Gross Assets .....            | 1.074                  |
| Net Loan Charge-Offs/Gross Assets .....            | 1.210                  |
| Net Income before Taxes/Risk-Weighted Assets ..... | (0.764)                |
| Adjusted brokered deposit ratio .....              | 0.065                  |
| Weighted Average CAMELS Component Rating .....     | 1.095                  |

\* Ratios are expressed as percentages.

\*\* Multipliers are rounded to three decimal places.

(ii) The six financial ratios and the weighted average CAMELS component rating will be multiplied by the respective pricing multiplier, and the products will be summed. To this result will be added the uniform amount. The resulting sum shall equal the institution's initial base assessment rate; provided, however, that no institution's initial base assessment rate shall be less than the minimum initial base assessment rate in effect for Risk Category I institutions for that quarter nor greater than the maximum initial base assessment rate in effect for Risk Category I institutions for that quarter.

(iii) *Uniform amount and pricing multipliers.* Except as adjusted for the actual assessment rates set by the Board under § 327.10(f), the uniform amount shall be:

(A) 4.861 whenever the assessment rate schedule set forth in § 327.10(a) is in effect;

(B) 2.861 whenever the assessment rate schedule set forth in § 327.10(b) is in effect;

(C) 1.861 whenever the assessment rate schedule set forth in § 327.10(c) is in effect; or

(D) 0.861 whenever the assessment rate schedule set forth in § 327.10(d) is in effect.

(iv) *Implementation of CAMELS rating changes—*(A) Changes between risk categories. If, during a quarter, a CAMELS composite rating change occurs that results in a Risk Category I institution moving from Risk Category I to Risk Category II, III or IV, the institution's initial base assessment rate for the portion of the quarter that it was in Risk Category I shall be determined using the supervisory ratings in effect

before the change and the financial ratios as of the end of the quarter, subject to adjustment pursuant to paragraphs (d)(1), (2), and (3) of this section, as appropriate, and adjusted for the actual assessment rates set by the Board under § 327.10(f). For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate, which shall be subject to adjustment pursuant to paragraphs (d)(1), (2), and (3), shall be determined under the assessment schedule for the appropriate Risk Category. If, during a quarter, a CAMELS composite rating change occurs that results in an institution moving from Risk Category II, III or IV to Risk Category I, then the financial ratios method shall apply for the portion of the quarter that it was in Risk Category I, subject to adjustment pursuant to paragraphs (d)(1), (2) and (3) of this section, as appropriate, and adjusted for the actual assessment rates set by the Board under § 327.10(f). For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate, which shall be subject to adjustment pursuant to paragraphs (d)(1), (2), and (3) of this section shall be determined

under the assessment schedule for the appropriate Risk Category.

(B) *Changes within Risk Category I.* If, during a quarter, an institution's CAMELS component ratings change in a way that will change the institution's initial base assessment rate within Risk Category I, the initial base assessment rate for the period before the change shall be determined under the financial ratios method using the CAMELS component ratings in effect before the change, subject to adjustment pursuant to paragraphs (d)(1), (2), and (3) of this section, as appropriate. Beginning on the date of the CAMELS component ratings change, the initial base assessment rate for the remainder of the quarter shall be determined using the CAMELS component ratings in effect after the change, again subject to adjustment pursuant to paragraphs (d)(1), (2), and (3) of this section, as appropriate.

(b) *Large and Highly Complex institutions*—(1) Assessment scorecard for large institutions (other than highly complex institutions). (i) A large institution other than a highly complex institution shall have its initial base assessment rate determined using the scorecard for large institutions.

SCORECARD FOR LARGE INSTITUTIONS

|           | Scorecard measures and components                     | Measure weights (percent) | Component weights (percent) |
|-----------|---|---------------------------|-----------------------------|
| P .....   | Performance Score                                     |                           |                             |
| P.1 ..... | Weighted Average CAMELS Rating .....                  | 100                       | 30                          |
| P.2 ..... | Ability to Withstand Asset-Related Stress .....       |                           | 50                          |
|           | Leverage ratio .....                                  | 10                        |                             |
|           | Concentration Measure .....                           | 35                        |                             |
|           | Core Earnings/Average Quarter-End Total Assets* ..... | 20                        |                             |
|           | Credit Quality Measure .....                          | 35                        |                             |
| P.3 ..... | Ability to Withstand Funding-Related Stress .....     |                           | 20                          |
|           | Core Deposits/Total Liabilities .....                 | 60                        |                             |
|           | Balance Sheet Liquidity Ratio .....                   | 40                        |                             |
| L .....   | Loss Severity Score .....                             |                           |                             |
| L.1 ..... | Loss Severity Measure .....                           |                           | 100                         |

\* Average of five quarter-end total assets (most recent and four prior quarters)

(ii) The scorecard for large institutions produces two scores: performance score and loss severity score.

(A) *Performance score for large institutions.* The performance score for large institutions is a weighted average of the scores for three measures: the weighted average CAMELS rating score, weighted at 30 percent; the abil-

ity to withstand asset-related stress score, weighted at 50 percent; and the ability to withstand funding-related stress score, weighted at 20 percent.

(1) *Weighted average CAMELS rating score.* (i) To compute the weighted average CAMELS rating score, a weighted average of an institution's CAMELS



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component ratings is calculated using the following weights:

| CAMELS Component | Weight |
|------------------|--------|
| C                | 25%    |
| A                | 20%    |
| M                | 25%    |
| E                | 10%    |
| L                | 10%    |
| S                | 10%    |

(ii) A weighted average CAMELS rating converts to a score that ranges from 25 to 100. A weighted average rating of 1 equals a score of 25 and a weighted average of 3.5 or greater equals a score of 100. Weighted average CAMELS ratings between 1 and 3.5 are assigned a score between 25 and 100. The score increases at an increasing rate as the weighted average CAMELS rating increases. Appendix B of this subpart describes the conversion of a weighted average CAMELS rating to a score.

(2) *Ability to withstand asset-related stress score.* (i) The ability to withstand asset-related stress score is a weighted average of the scores for four measures: Leverage ratio; concentration measure; the ratio of core earnings to average quarter-end total assets; and the credit quality measure. Appendices A and C of this subpart define these measures.

(ii) The Leverage ratio and the ratio of core earnings to average quarter-end total assets are described in appendix A

and the method of calculating the scores is described in appendix C of this subpart.

(iii) The score for the concentration measure is the greater of the higher-risk assets to Tier 1 capital and reserves score or the growth-adjusted portfolio concentrations score. Both ratios are described in appendix C.

(iv) The score for the credit quality measure is the greater of the criticized and classified items to Tier 1 capital and reserves score or the underperforming assets to Tier 1 capital and reserves score.

(v) The following table shows the cutoff values and weights for the measures used to calculate the ability to withstand asset-related stress score. Appendix B of this subpart describes how each measure is converted to a score between 0 and 100 based upon the minimum and maximum cutoff values, where a score of 0 reflects the lowest risk and a score of 100 reflects the highest risk.

CUTOFF VALUES AND WEIGHTS FOR MEASURES TO CALCULATE ABILITY TO WITHSTAND ASSET-RELATED STRESS SCORE

| Measures of the ability to withstand asset-related stress             | Cutoff values     |                   | Weights (percent) |
|---|-------------------|-------------------|-------------------|
|   | Minimum (percent) | Maximum (percent) |                   |
| Leverage ratio .....  | 6                 | 13                | 10                |
| Concentration Measure .....   |                   |                   | 35                |
| Higher-Risk Assets to Tier 1 Capital and Reserves; or .....           | 0                 | 135               |                   |
| Growth-Adjusted Portfolio Concentrations .....                        | 4                 | 56                |                   |
| Core Earnings/Average Quarter-End Total Assets * .....                | 0                 | 2                 | 20                |
| Credit Quality Measure .....  |                   |                   | 35                |
| Criticized and Classified Items/Tier 1 Capital and Reserves; or ..... | 7                 | 100               |                   |

## CUTOFF VALUES AND WEIGHTS FOR MEASURES TO CALCULATE ABILITY TO WITHSTAND ASSET-RELATED STRESS SCORE—Continued

| Measures of the ability to withstand asset-related stress | Cutoff values     |                   | Weights (percent) |
|---|-------------------|-------------------|-------------------|
|   | Minimum (percent) | Maximum (percent) |                   |
| Underperforming Assets/Tier 1 Capital and Reserves .....  | 2                 | 35                |                   |

\* Average of five quarter-end total assets (most recent and four prior quarters).

(vi) The score for each measure in the table in paragraph (b)(1)(ii)(A)(2)(v) is multiplied by its respective weight and the resulting weighted score is summed to arrive at the score for an ability to withstand asset-related stress, which can range from 0 to 100, where a score of 0 reflects the lowest risk and a score of 100 reflects the highest risk.

(3) *Ability to withstand funding-related stress score.* Two measures are used to compute the ability to withstand funding-related stress score: a core deposits to total liabilities ratio, and a balance

sheet liquidity ratio. Appendix A of this subpart describes these measures. Appendix B of this subpart describes how these measures are converted to a score between 0 and 100, where a score of 0 reflects the lowest risk and a score of 100 reflects the highest risk. The ability to withstand funding-related stress score is the weighted average of the scores for the two measures. In the following table, cutoff values and weights are used to derive an institution's ability to withstand funding-related stress score:

## CUTOFF VALUES AND WEIGHTS TO CALCULATE ABILITY TO WITHSTAND FUNDING-RELATED STRESS SCORE

| Measures of the ability to withstand funding-related stress | Cutoff values     |                   | Weights (percent) |
|---|-------------------|-------------------|-------------------|
|   | Minimum (percent) | Maximum (percent) |                   |
| Core Deposits/Total Liabilities .....                       | 5                 | 87                | 60                |
| Balance Sheet Liquidity Ratio .....                         | 7                 | 243               | 40                |

(4) *Calculation of Performance Score.* In paragraph (b)(1)(ii)(A)(3), the scores for the weighted average CAMELS rating, the ability to withstand asset-related stress, and the ability to withstand funding-related stress are multiplied by their respective weights (30 percent, 50 percent and 20 percent, respectively) and the results are summed to arrive at the performance score. The performance score cannot be less than 0 or more than 100, where a score of 0 reflects the lowest risk and a score of 100 reflects the highest risk.

(B) *Loss severity score.* The loss severity score is based on a loss severity measure that is described in appendix D of this subpart. Appendix B also describes how the loss severity measure is converted to a score between 0 and 100. The loss severity score cannot be less than 0 or more than 100, where a score of 0 reflects the lowest risk and a score of 100 reflects the highest risk.

Cutoff values for the loss severity measure are:

## CUTOFF VALUES TO CALCULATE LOSS SEVERITY SCORE

| Measure of loss severity | Cutoff values     |                   |
|--------------------------|-------------------|-------------------|
|                          | Minimum (percent) | Maximum (percent) |
| Loss Severity .....      | 0                 | 28                |

(C) *Total Score.* The performance and loss severity scores are combined to produce a total score. The loss severity score is converted into a loss severity factor that ranges from 0.8 (score of 5 or lower) to 1.2 (score of 85 or higher). Scores at or below the minimum cutoff of 5 receive a loss severity factor of 0.8, and scores at or above the maximum cutoff of 85 receive a loss severity factor of 1.2. The following linear interpolation converts loss severity scores

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between the cutoffs into a loss severity factor:

(*Loss Severity Factor* = 0.8 + [0.005 \* (*Loss Severity Score* - 5)]).

The performance score is multiplied by the loss severity factor to produce a total score (total score = performance score \* loss severity factor). The total score can be up to 20 percent higher or lower than the performance score but cannot be less than 30 or more than 90. The total score is subject to adjustment, up or down, by a maximum of 15 points, as set forth in paragraph (b)(3)

of this section. The resulting total score after adjustment cannot be less than 30 or more than 90.

(D) *Initial base assessment rate*. A large institution with a total score of 30 pays the minimum initial base assessment rate and an institution with a total score of 90 pays the maximum initial base assessment rate. For total scores between 30 and 90, initial base assessment rates rise at an increasing rate as the total score increases, calculated according to the following formula:

$$Rate = Minimum Rate + \left[ \left( \left( 1.4245 \times \left( \frac{Score}{100} \right)^3 \right) - 0.0385 \right) \times (Maximum Rate - Minimum Rate) \right]$$

where Rate is the initial base assessment rate (expressed in basis points), Maximum Rate is the maximum initial base assessment rate then in effect (expressed in basis points), and Minimum Rate is the minimum initial base assessment rate then in effect (expressed in basis points). Initial base assessment rates are subject to adjustment pursuant to paragraphs (b)(3), (d)(1), (d)(2), of this section; large institutions that are not well capitalized or have a CAMELS composite rating of 3, 4 or 5 shall be

subject to the adjustment at paragraph (d)(3); these adjustments shall result in the institution's total base assessment rate, which in no case can be lower than 50 percent of the institution's initial base assessment rate.

(2) *Assessment scorecard for highly complex institutions*. (i) A highly complex institution shall have its initial base assessment rate determined using the scorecard for highly complex institutions.

SCORECARD FOR HIGHLY COMPLEX INSTITUTIONS

|           | Measures and components                               | Measure weights (percent) | Component weights (percent) |
|-----------|---|---------------------------|-----------------------------|
| P .....   | Performance Score                                     |                           |                             |
| P.1 ..... | Weighted Average CAMELS Rating .....                  | 100                       | 30                          |
| P.2 ..... | Ability To Withstand Asset-Related Stress .....       |                           | 50                          |
|           | Leverage ratio .....                                  | 10                        |                             |
|           | Concentration Measure .....                           | 35                        |                             |
|           | Core Earnings/Average Quarter-End Total Assets .....  | 20                        |                             |
|           | Credit Quality Measure and Market Risk Measure .....  | 35                        |                             |
| P.3 ..... | Ability To Withstand Funding-Related Stress .....     |                           | 20                          |
|           | Core Deposits/Total Liabilities .....                 | 50                        |                             |
|           | Balance Sheet Liquidity Ratio .....                   | 30                        |                             |
|           | Average Short-Term Funding/Average Total Assets ..... | 20                        |                             |
| L .....   | Loss Severity Score .....                             |                           |                             |
| L.1 ..... | Loss Severity .....                                   |                           | 100                         |

(ii) The scorecard for highly complex institutions produces two scores: performance and loss severity.

(A) *Performance score for highly complex institutions*. The performance score for highly complex institutions is the

weighted average of the scores for three components: weighted average CAMELS rating, weighted at 30 percent; ability to withstand asset-related stress score, weighted at 50 percent;

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and ability to withstand funding-related stress score, weighted at 20 percent.

(1) *Weighted average CAMELS rating score.* (i) To compute the score for the

weighted average CAMELS rating, a weighted average of an institution's CAMELS component ratings is calculated using the following weights:

| CAMELS Component | Weight |
|------------------|--------|
| C                | 25%    |
| A                | 20%    |
| M                | 25%    |
| E                | 10%    |
| L                | 10%    |
| S                | 10%    |

(ii) A weighted average CAMELS rating converts to a score that ranges from 25 to 100. A weighted average rating of 1 equals a score of 25 and a weighted average of 3.5 or greater equals a score of 100. Weighted average CAMELS ratings between 1 and 3.5 are assigned a score between 25 and 100. The score increases at an increasing rate as the weighted average CAMELS rating increases. Appendix B of this subpart describes the conversion of a weighted average CAMELS rating to a score.

(2) *Ability to withstand asset-related stress score.* (i) The ability to withstand asset-related stress score is a weighted average of the scores for four measures: Leverage ratio; concentration measure; ratio of core earnings to average quarter-end total assets; credit quality measure and market risk measure. Appendix A of this subpart describes these measures.

(ii) The Leverage ratio and the ratio of core earnings to average quarter-end total assets are described in appendix A and the method of calculating the scores is described in appendix B of this subpart.

(iii) The score for the concentration measure for highly complex institutions is the greatest of the higher-risk assets to the sum of Tier 1 capital and reserves score, the top 20 counterparty exposure to the sum of Tier 1 capital

and reserves score, or the largest counterparty exposure to the sum of Tier 1 capital and reserves score. Each ratio is described in appendix A of this subpart. The method used to convert the concentration measure into a score is described in appendix C of this subpart.

(iv) The credit quality score is the greater of the criticized and classified items to Tier 1 capital and reserves score or the underperforming assets to Tier 1 capital and reserves score. The market risk score is the weighted average of three scores—the trading revenue volatility to Tier 1 capital score, the market risk capital to Tier 1 capital score, and the level 3 trading assets to Tier 1 capital score. All of these ratios are described in appendix A of this subpart and the method of calculating the scores is described in appendix B. Each score is multiplied by its respective weight, and the resulting weighted score is summed to compute the score for the market risk measure. An overall weight of 35 percent is allocated between the scores for the credit quality measure and market risk measure. The allocation depends on the ratio of average trading assets to the sum of average securities, loans and trading assets (trading asset ratio) as follows:

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(v) Weight for credit quality score = 35 percent \* (1—trading asset ratio); and,

(vi) Weight for market risk score = 35 percent \* trading asset ratio.

(vii) Each of the measures used to calculate the ability to withstand asset-related stress score is assigned the following cutoff values and weights:

### CUTOFF VALUES AND WEIGHTS FOR MEASURES TO CALCULATE THE ABILITY TO WITHSTAND ASSET-RELATED STRESS SCORE

| Measures of the ability to withstand asset-related stress   | Cutoff values     |                   | Market risk measure (percent) | Weights (percent)               |
|---|-------------------|-------------------|-------------------------------|---------------------------------|
|   | Minimum (percent) | Maximum (percent) |                               |                                 |
| Leverage ratio .....  | 6                 | 13                | .....                         | 10.                             |
| Concentration Measure .....   | .....             | .....             | .....                         | 35.                             |
| Higher Risk Assets/Tier 1 Capital and Reserves; Top 20 Counterparty Exposure/Tier 1 Capital and Reserves; or, | 0                 | 135               | .....                         | .....                           |
| Largest Counterparty Exposure/Tier 1 Capital and Reserves.  | 0                 | 125               | .....                         | .....                           |
| Core Earnings/Average Quarter-end Total Assets .....  | 0                 | 20                | .....                         | .....                           |
| Credit Quality Measure * .....  | .....             | .....             | .....                         | 20.                             |
| Criticized and Classified Items to Tier 1 Capital and Reserves; or,   | 7                 | 100               | .....                         | 35 * (1 – Trading Asset Ratio). |
| Underperforming Assets/Tier 1 Capital and Reserves.   | 2                 | 35                | .....                         | .....                           |
| Market Risk Measure * .....   | .....             | .....             | .....                         | 35 * Trading Asset Ratio.       |
| Trading Revenue Volatility/Tier 1 Capital .....   | 0                 | 2                 | 60                            | .....                           |
| Market Risk Capital/Tier 1 Capital .....  | 0                 | 10                | 20                            | .....                           |
| Level 3 Trading Assets/Tier 1 Capital .....   | 0                 | 35                | 20                            | .....                           |

\* Combined, the credit quality measure and the market risk measure are assigned a 35 percent weight. The relative weight of each of the two scores depends on the ratio of average trading assets to the sum of average securities, loans and trading assets (trading asset ratio).

(viii) [Reserved]

(ix) The score of each measure is multiplied by its respective weight and the resulting weighted score is summed to compute the ability to withstand asset-related stress score, which can range from 0 to 100, where a score of 0 reflects the lowest risk and a score of 100 reflects the highest risk.

(3) *Ability to withstand funding related stress score.* Three measures are used to calculate the score for the ability to withstand funding-related stress: a core deposits to total liabilities ratio,

a balance sheet liquidity ratio, and average short-term funding to average total assets ratio. Appendix A of this subpart describes these ratios. Appendix B of this subpart describes how each measure is converted to a score. The ability to withstand funding-related stress score is the weighted average of the scores for the three measures. In the following table, cutoff values and weights are used to derive an institution's ability to withstand funding-related stress score:

### CUTOFF VALUES AND WEIGHTS TO CALCULATE ABILITY TO WITHSTAND FUNDING-RELATED STRESS MEASURES

| Measures of the ability to withstand funding-related stress | Cutoff values     |                   | Weights (percent) |
|---|-------------------|-------------------|-------------------|
|   | Minimum (percent) | Maximum (percent) |                   |
| Core Deposits/Total Liabilities .....                       | 5                 | 87                | 50                |
| Balance Sheet Liquidity Ratio .....                         | 7                 | 243               | 30                |
| Average Short-term Funding/Average Total Assets .....       | 2                 | 19                | 20                |

(4) *Calculation of Performance Score.* The weighted average CAMELS score, the ability to withstand asset-related

stress score, and the ability to withstand funding-related stress score are multiplied by their respective weights

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(30 percent, 50 percent and 20 percent, respectively) and the results are summed to arrive at the performance score, which cannot be less than 0 or more than 100.

(B) *Loss severity score.* The loss severity score is based on a loss severity

measure described in appendix D of this subpart. Appendix B of this subpart also describes how the loss severity measure is converted to a score between 0 and 100. Cutoff values for the loss severity measure are:

CUTOFF VALUES FOR LOSS SEVERITY MEASURE

| Measure of loss severity | Cutoff values     |                   |
|--------------------------|-------------------|-------------------|
|                          | Minimum (percent) | Maximum (percent) |
| Loss Severity .....      | 0                 | 28                |

(C) *Total Score.* The performance and loss severity scores are combined to produce a total score. The loss severity score is converted into a loss severity factor that ranges from 0.8 (score of 5 or lower) to 1.2 (score of 85 or higher). Scores at or below the minimum cutoff of 5 receive a loss severity factor of 0.8, and scores at or above the maximum cutoff of 85 receive a loss severity factor of 1.2. The following linear interpolation converts loss severity scores between the cutoffs into a loss severity factor: (Loss Severity Factor =  $0.8 + [0.005 * (\text{Loss Severity Score} - 5)]$ ). The performance score is multiplied by the loss severity factor to produce a total score (total score = performance score \* loss severity factor). The total score can be up to 20 percent higher or lower

than the performance score but cannot be less than 30 or more than 90. The total score is subject to adjustment, up or down, by a maximum of 15 points, as set forth in paragraph (b)(3) of this section. The resulting total score after adjustment cannot be less than 30 or more than 90.

(D) *Initial base assessment rate.* A highly complex institution with a total score of 30 pays the minimum initial base assessment rate and an institution with a total score of 90 pays the maximum initial base assessment rate. For total scores between 30 and 90, initial base assessment rates rise at an increasing rate as the total score increases, calculated according to the following formula:

$$\text{Rate} = \text{Minimum Rate} + \left[ \left( \left( 1.4245 \times \left( \frac{\text{Score}}{100} \right)^3 \right) - 0.0385 \right) \times (\text{Maximum Rate} - \text{Minimum Rate}) \right]$$

where Rate is the initial base assessment rate (expressed in basis points), Maximum Rate is the maximum initial base assessment rate then in effect (expressed in basis points), and Minimum Rate is the minimum initial base assessment rate then in effect (expressed in basis points). Initial base assessment rates are subject to adjustment pursuant to paragraphs (b)(3), (d)(1), and (d)(2) of this section; highly complex institutions that are not well capitalized or have a CAMELS composite rating of 3, 4 or 5 shall be subject to the adjustment at paragraph (d)(3); these

adjustments shall result in the institution's total base assessment rate, which in no case can be lower than 50 percent of the institution's initial base assessment rate.

(3) *Adjustment to total score for large institutions and highly complex institutions.* The total score for large institutions and highly complex institutions is subject to adjustment, up or down, by a maximum of 15 points, based upon significant risk factors that are not adequately captured in the appropriate

scorecard. In making such adjustments, the FDIC may consider such information as financial performance and condition information and other market or supervisory information. The FDIC will also consult with an institution's primary federal regulator and, for state chartered institutions, state banking supervisor.

(i) *Prior notice of adjustments—(A) Prior notice of upward adjustment.* Prior to making any upward adjustment to an institution's total score because of considerations of additional risk information, the FDIC will formally notify the institution and its primary federal regulator and provide an opportunity to respond. This notification will include the reasons for the adjustment and when the adjustment will take effect.

(B) *Prior notice of downward adjustment.* Prior to making any downward adjustment to an institution's total score because of considerations of additional risk information, the FDIC will formally notify the institution's primary federal regulator and provide an opportunity to respond.

(ii) *Determination whether to adjust upward; effective period of adjustment.* After considering an institution's and the primary federal regulator's responses to the notice, the FDIC will determine whether the adjustment to an institution's total score is warranted, taking into account any revisions to scorecard measures, as well as any actions taken by the institution to address the FDIC's concerns described in the notice. The FDIC will evaluate the need for the adjustment each subsequent assessment period. Except as provided in paragraph (b)(3)(iv) of this section, the amount of adjustment cannot exceed the proposed adjustment amount contained in the initial notice unless additional notice is provided so that the primary federal regulator and the institution may respond.

(iii) *Determination whether to adjust downward; effective period of adjustment.* After considering the primary federal regulator's responses to the notice, the FDIC will determine whether the adjustment to total score is warranted, taking into account any revisions to scorecard measures. Any downward adjustment in an institution's total score

will remain in effect for subsequent assessment periods until the FDIC determines that an adjustment is no longer warranted. Downward adjustments will be made without notification to the institution. However, the FDIC will provide advance notice to an institution and its primary federal regulator and give them an opportunity to respond before removing a downward adjustment.

(iv) *Adjustment without notice.* Notwithstanding the notice provisions set forth above, the FDIC may change an institution's total score without advance notice under this paragraph, if the institution's supervisory ratings or the scorecard measures deteriorate.

(c) *Insured branches of foreign banks—*  
(1) *Risk categories for insured branches of foreign banks.* Insured branches of foreign banks shall be assigned to risk categories as set forth in paragraph (a)(1) of this section.

(2) *Capital evaluations for insured branches of foreign banks.* Each insured branch of a foreign bank will receive one of the following three capital evaluations on the basis of data reported in the institution's Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks dated as of March 31 for the assessment period beginning the preceding January 1; dated as of June 30 for the assessment period beginning the preceding April 1; dated as of September 30 for the assessment period beginning the preceding July 1; and dated as of December 31 for the assessment period beginning the preceding October 1.

(i) *Well Capitalized.* An insured branch of a foreign bank is Well Capitalized if the insured branch:

(A) Maintains the pledge of assets required under § 347.209 of this chapter; and

(B) Maintains the eligible assets prescribed under § 347.210 of this chapter at 108 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (c)(2) of this section.

(ii) *Adequately Capitalized.* An insured branch of a foreign bank is Adequately Capitalized if the insured branch:

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(A) Maintains the pledge of assets required under § 347.209 of this chapter; and

(B) Maintains the eligible assets prescribed under § 347.210 of this chapter at 106 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (c)(2) of this section; and

(C) Does not meet the definition of a Well Capitalized insured branch of a foreign bank.

(iii) *Undercapitalized.* An insured branch of a foreign bank is undercapitalized institution if it does not qualify as either Well Capitalized or Adequately Capitalized under paragraphs (c)(2)(i) and (ii) of this section.

(3) *Supervisory evaluations for insured branches of foreign banks.* Each insured branch of a foreign bank will be assigned to one of three supervisory groups as set forth in paragraph (a)(3) of this section.

(4) *Assessment method for insured branches of foreign banks in Risk Category I.* Insured branches of foreign banks in Risk Category I shall be assessed using the weighted average ROCA component rating.

(i) *Weighted average ROCA component rating.* The weighted average ROCA component rating shall equal the sum of the products that result from multiplying ROCA component ratings by the following percentages: Risk Management—35%, Operational Controls—25%, Compliance—25%, and Asset Quality—15%. The weighted average ROCA rating will be multiplied by 5.076 (which shall be the pricing multiplier). To this result will be added a uniform amount. The resulting sum—the initial base assessment rate—will equal an institution's total base assessment rate; provided, however, that no institution's total base assessment rate will be less than the minimum total base assessment rate in effect for Risk Category I institutions for that quarter nor greater than the maximum total base assessment rate in effect for Risk Category I institutions for that quarter.

(ii) *Uniform amount.* Except as adjusted for the actual assessment rates set by the Board under § 327.10(f), the uniform amount for all insured branches of foreign banks shall be:

(A) —3.127 whenever the assessment rate schedule set forth in § 327.10(a) is in effect;

(B) —5.127 whenever the assessment rate schedule set forth in § 327.10(b) is in effect;

(C) —6.127 whenever the assessment rate schedule set forth in § 327.10(c) is in effect; or

(D) —7.127 whenever the assessment rate schedule set forth in § 327.10(d) is in effect.

(iii) *Insured branches of foreign banks not subject to certain adjustments.* No insured branch of a foreign bank in any risk category shall be subject to the adjustments in paragraphs (b)(3), (d)(1), or (d)(3) of this section.

(iv) *Implementation of changes between Risk Categories for insured branches of foreign banks.* If, during a quarter, a ROCA rating change occurs that results in an insured branch of a foreign bank moving from Risk Category I to Risk Category II, III or IV, the institution's initial base assessment rate for the portion of the quarter that it was in Risk Category I shall be determined using the weighted average ROCA component rating. For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate shall be determined under the assessment schedule for the appropriate Risk Category. If, during a quarter, a ROCA rating change occurs that results in an insured branch of a foreign bank moving from Risk Category II, III or IV to Risk Category I, the institution's assessment rate for the portion of the quarter that it was in Risk Category I shall equal the rate determined as provided using the weighted average ROCA component rating. For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate shall be determined under the assessment schedule for the appropriate Risk Category.

(v) *Implementation of changes within Risk Category I for insured branches of foreign banks.* If, during a quarter, an insured branch of a foreign bank remains in Risk Category I, but a ROCA component rating changes that will affect the institution's initial base assessment rate, separate assessment rates for the portion(s) of the quarter



before and after the change(s) shall be determined under this paragraph (c)(4) of this section.

(d) *Adjustments*—(1) *Unsecured debt adjustment to initial base assessment rate for all institutions.* All institutions, except new institutions as provided under paragraphs (f)(1) and (2) of this section and insured branches of foreign banks as provided under paragraph (c)(4)(iii) of this section, shall be subject to an adjustment of assessment rates for unsecured debt. Any unsecured debt adjustment shall be made after any adjustment under paragraph (b)(3) of this section.

(i) *Application of unsecured debt adjustment.* The unsecured debt adjustment shall be determined as the sum of the initial base assessment rate plus 40 basis points; that sum shall be multiplied by the ratio of an insured depository institution's long-term unsecured debt to its assessment base. The amount of the reduction in the assessment rate due to the adjustment is equal to the dollar amount of the adjustment divided by the amount of the assessment base.

(ii) *Limitation*—No unsecured debt adjustment for any institution shall exceed the lesser of 5 basis points or 50 percent of the institution's initial base assessment rate.

(iii) *Applicable quarterly reports of condition*—Unsecured debt adjustment ratios for any given quarter shall be calculated from quarterly reports of condition (Consolidated Reports of Condition and Income and Thrift Financial Reports, or any successor reports to either, as appropriate) filed by each institution as of the last day of the quarter.

(2) *Depository institution debt adjustment to initial base assessment rate for all institutions.* All institutions shall be subject to an adjustment of assessment rates for unsecured debt held that is issued by another depository institution. Any such depository institution debt adjustment shall be made after any adjustment under paragraphs (b)(3) and (d)(1) of this section.

(i) *Application of depository institution debt adjustment.* An insured depository institution shall pay a 50 basis point adjustment on the amount of unsecured debt it holds that was issued by

another insured depository institution to the extent that such debt exceeds 3 percent of the institution's Tier 1 capital. The amount of long-term unsecured debt issued by another insured depository institution shall be calculated using the same valuation methodology used to calculate the amount of such debt for reporting on the asset side of the balance sheets.

(ii) *Applicable quarterly reports of condition.* Depository institution debt adjustment ratios for any given quarter shall be calculated from quarterly reports of condition (Consolidated Reports of Condition and Income and Thrift Financial Reports, or any successor reports to either, as appropriate) filed by each institution as of the last day of the quarter.

(3) *Brokered Deposit Adjustment.* All small institutions in Risk Categories II, III, and IV, all large institutions and all highly complex institutions, except large and highly complex institutions (including new large and new highly complex institutions) that are well capitalized and have a CAMELS composite rating of 1 or 2, shall be subject to an assessment rate adjustment for brokered deposits. Any such brokered deposit adjustment shall be made after any adjustment under paragraphs (b)(3), (d)(1), and (d)(2) of this section. The brokered deposit adjustment includes all brokered deposits as defined in Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f), and 12 CFR 337.6, including reciprocal deposits as defined in § 327.8(p), and brokered deposits that consist of balances swept into an insured institution from another institution. The adjustment under this paragraph is limited to those institutions whose ratio of brokered deposits to domestic deposits is greater than 10 percent; asset growth rates do not affect the adjustment. Insured branches of foreign banks are not subject to the brokered deposit adjustment as provided in paragraph (c)(4)(iii) of this section.

(i) *Application of brokered deposit adjustment.* The brokered deposit adjustment shall be determined by multiplying 25 basis points by the ratio of

the difference between an insured depository institution's brokered deposits and 10 percent of its domestic deposits to its assessment base.

(ii) *Limitation.* The maximum brokered deposit adjustment will be 10 basis points; the minimum brokered deposit adjustment will be 0.

(iii) *Applicable quarterly reports of condition.* Brokered deposit ratios for any given quarter shall be calculated from the quarterly reports of condition (Call Reports and Thrift Financial Reports, or any successor reports to either, as appropriate) filed by each institution as of the last day of the quarter.

(e) *Request to be treated as a large institution—(1) Procedure.* Any institution with assets of between \$5 billion and \$10 billion may request that the FDIC determine its assessment rate as a large institution. The FDIC will consider such a request provided that it has sufficient information to do so. Any such request must be made to the FDIC's Division of Insurance and Research. Any approved change will become effective within one year from the date of the request. If an institution whose request has been granted subsequently reports assets of less than \$5 billion in its report of condition for four consecutive quarters, the institution shall be deemed a small institution for assessment purposes.

(2) *Time limit on subsequent request for alternate method.* An institution whose request to be assessed as a large institution is granted by the FDIC shall not be eligible to request that it be assessed as a small institution for a period of three years from the first quarter in which its approved request to be assessed as a large institution became effective. Any request to be assessed as a small institution must be made to the FDIC's Division of Insurance and Research.

(3) An institution that disagrees with the FDIC's determination that it is a large, highly complex, or small institution may request review of that determination pursuant to § 327.4(c).

(f) *New and established institutions and exceptions—(1) New small institutions.* A new small Risk Category I institution shall be assessed the Risk Category I maximum initial base assessment rate for the relevant assessment period. No

new small institution in any risk category shall be subject to the unsecured debt adjustment as determined under paragraph (d)(1) of this section. All new small institutions in any Risk Category shall be subject to the depository institution debt adjustment as determined under paragraph (d)(2) of this section. All new small institutions in Risk Categories II, III, and IV shall be subject to the brokered deposit adjustment as determined under paragraph (d)(3) of this section.

(2) *New large institutions and new highly complex institutions.* All new large institutions and all new highly complex institutions shall be assessed under the appropriate method provided at paragraph (b)(1) or (2) of this section and subject to the adjustments provided at paragraphs (b)(3), (d)(2), and (d)(3) of this section. No new highly complex or large institutions are entitled to adjustment under paragraph (d)(1) of this section. If a large or highly complex institution has not yet received CAMELS ratings, it will be given a weighted CAMELS rating of 2 for assessment purposes until actual CAMELS ratings are assigned.

(3) *CAMELS ratings for the surviving institution in a merger or consolidation.* When an established institution merges with or consolidates into a new institution, if the FDIC determines the resulting institution to be an established institution under § 327.8(k)(1), its CAMELS ratings for assessment purposes will be based upon the established institution's ratings prior to the merger or consolidation until new ratings become available.

(4) *Rate applicable to institutions subject to subsidiary or credit union exception.* A small Risk Category I institution that is established under § 327.8(k)(4) or (5), but does not have CAMELS component ratings, shall be assessed at 2 basis points above the minimum initial base assessment rate applicable to Risk Category I institutions until it receives CAMELS component ratings. Thereafter, the assessment rate will be determined by annualizing, where appropriate, financial ratios obtained from all quarterly reports of condition that have been filed, until the institution files four quarterly reports of condition. If a

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large or highly complex institution is considered established under § 327.8(k)(4) or (5), but does not have CAMELS component ratings, it will be given a weighted CAMELS rating of 2 for assessment purposes until actual CAMELS ratings are assigned.

(5) *Request for review.* An institution that disagrees with the FDIC's determination that it is a new institution may request review of that determination pursuant to § 327.4(c).

(g) *Assessment rates for bridge depository institutions and conservatorships.* Institutions that are bridge depository institutions under 12 U.S.C. 1821(n) and institutions for which the Corporation has been appointed or serves as conservator shall, in all cases, be assessed at the Risk Category I minimum initial base assessment rate, which shall not be subject to adjustment under paragraphs (b)(3), (d)(1), (2) or (3) of this section.

[76 FR 10708, Feb. 25, 2011, as amended at 79 FR 70437, Nov. 25, 2014]

EFFECTIVE DATE NOTE: At 80 FR 70437, Nov. 26, 2014, § 327.9 was amended by revising paragraphs (a)(2)(i) and (ii), effective Jan. 1, 2018. For the convenience of the user, the revised text is set forth as follows:

### § 327.9 Assessment pricing methods.

(a) \* \* \*

(2) \* \* \*

(i) *Well Capitalized.* A Well Capitalized institution is one that satisfies each of the following capital ratio standards: Total risk-based capital ratio, 10.0 percent or greater; tier 1 risk-based capital ratio, 8.0 percent or greater; leverage ratio, 5.0 percent or greater; common equity tier 1 capital ratio, 6.5

percent or greater; and, if the institution is an insured depository institution subject to the enhanced supplementary leverage ratio standards under 12 CFR 6.4(c)(1)(iv)(B), 12 CFR 208.43(c)(2)(iv)(B), or 12 CFR 324.403(b)(1)(v), as each may be amended from time to time, a supplementary leverage ratio of 6.0 percent or greater.

(ii) *Adequately Capitalized.* An Adequately Capitalized institution is one that does not satisfy the standards of Well Capitalized in paragraph (a)(2)(i) of this section but satisfies each of the following capital ratio standards: Total risk-based capital ratio, 8.0 percent or greater; tier 1 risk-based capital ratio, 6.0 percent or greater; leverage ratio, 4.0 percent or greater; common equity tier 1 capital ratio, 4.5 percent or greater; and, if the institution is subject to the advanced approaches risk-based capital rules under 12 CFR 6.4(c)(2)(iv)(B), 12 CFR 208.43(c)(2)(iv)(B), or 12 CFR 324.403(b)(2)(vi), as each may be amended from time to time, a supplementary leverage ratio of 3.0 percent or greater.

\* \* \* \* \*

### § 327.10 Assessment rate schedules.

(a) *Assessment rate schedules before the reserve ratio of the DIF reaches 1.15 percent—(1) Applicability.* The assessment rate schedules in paragraph (a) of this section will cease to be applicable when the reserve ratio of the DIF first reaches 1.15 percent.

(2) *Initial Base Assessment Rate Schedule.* Before the reserve ratio of the DIF reaches 1.15 percent, the initial base assessment rate for an insured depository institution shall be the rate prescribed in the following schedule:

INITIAL BASE ASSESSMENT RATE SCHEDULE BEFORE THE RESERVE RATIO OF THE DIF REACHES 1.15 PERCENT

|                                    | Risk category I | Risk category II | Risk category III | Risk category IV | Large and highly complex institutions |
|------------------------------------|-----------------|------------------|-------------------|------------------|---------------------------------------|
| Initial base assessment rate ..... | 5–9             | 14               | 23                | 35               | 5–35                                  |

\* All amounts for all risk categories are in basis points annually. Initial base rates that are not the minimum or maximum rate will vary between these rates.

(i) *Risk Category I Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all institutions in Risk Category I shall range from 5 to 9 basis points.

(ii) *Risk Category II, III, and IV Initial Base Assessment Rate Schedule.* The an-

nual initial base assessment rates for Risk Categories II, III, and IV shall be 14, 23, and 35 basis points, respectively.

(iii) All institutions in any one risk category, other than Risk Category I, will be charged the same initial base

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assessment rate, subject to adjustment as appropriate.

(iv) *Large and Highly Complex Institutions Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all large and highly complex institutions shall range from 5 to 35 basis points.

(3) *Total Base Assessment Rate Schedule after Adjustments.* Before the reserve ratio of the DIF reaches 1.15 percent, the total base assessment rates after adjustments for an insured depository institution shall be as prescribed in the following schedule.

TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS)\* BEFORE THE RESERVE RATIO OF THE DIF REACHES 1.15 PERCENT \*\*

|                                    | Risk category I | Risk category II | Risk category III | Risk category IV | Large and highly complex institutions |
|------------------------------------|-----------------|------------------|-------------------|------------------|---------------------------------------|
| Initial base assessment rate ..... | 5–9             | 14               | 23                | 35               | 5–35                                  |
| Unsecured debt adjustment .....    | (4.5)–0         | (5)–0            | (5)–0             | (5)–0            | (5)–0                                 |
| Brokered deposit adjustment .....  | 0–10            | 0–10             | 0–10              | 0–10             | 0–10                                  |
| Total base assessment rate .....   | 2.5–9           | 9–24             | 18–33             | 30–45            | 2.5–45                                |

\* All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

\*\* Total base assessment rates do not include the depository institution debt adjustment.

(i) *Risk Category I Total Base Assessment Rate Schedule.* The annual total base assessment rates for all institutions in Risk Category I shall range from 2.5 to 9 basis points.

(ii) *Risk Category II Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category II shall range from 9 to 24 basis points.

(iii) *Risk Category III Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category III shall range from 18 to 33 basis points.

(iv) *Risk Category IV Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category IV shall range from 30 to 45 basis points.

(v) *Large and Highly Complex Institutions Total Base Assessment Rate Schedule.* The annual total base assessment rates for all large and highly complex institutions shall range from 2.5 to 45 basis points.

(b) *Assessment rate schedules once the reserve ratio of the DIF first reaches 1.15 percent, and the reserve ratio for the immediately prior assessment period is less than 2 percent* (1) *Initial Base Assessment Rate Schedule.* Once the reserve ratio of the DIF first reaches 1.15 percent, and the reserve ratio for the immediately prior assessment period is less than 2 percent, the initial base assessment rate for an insured depository institution shall be the rate prescribed in the following schedule:

INITIAL BASE ASSESSMENT RATE SCHEDULE ONCE THE RESERVE RATIO OF THE DIF REACHES 1.15 PERCENT AND THE RESERVE RATIO FOR THE IMMEDIATELY PRIOR ASSESSMENT PERIOD IS LESS THAN 2 PERCENT

|                                    | Risk category I | Risk category II | Risk category III | Risk category IV | Large and highly complex institutions |
|------------------------------------|-----------------|------------------|-------------------|------------------|---------------------------------------|
| Initial base assessment rate ..... | 3–7             | 12               | 19                | 30               | 3–30                                  |

\* All amounts for all risk categories are in basis points annually. Initial base rates that are not the minimum or maximum rate will vary between these rates.

(i) *Risk Category I Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all institutions in Risk Category I shall range from 3 to 7 basis points.

(ii) *Risk Category II, III, and IV Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for Risk Categories II, III, and IV shall be 12, 19, and 30 basis points, respectively.

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(iii) All institutions in any one risk category, other than Risk Category I, will be charged the same initial base assessment rate, subject to adjustment as appropriate.

(iv) *Large and Highly Complex Institutions Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all large and highly complex institutions shall range from 3 to 30 basis points.

(2) *Total Base Assessment Rate Schedule after Adjustments.* Once the reserve ratio of the DIF first reaches 1.15 percent, and the reserve ratio for the immediately prior assessment period is less than 2 percent, the total base assessment rates after adjustments for an insured depository institution shall be as prescribed in the following schedule.

TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS) \* ONCE THE RESERVE RATIO OF THE DIF REACHES 1.15 PERCENT AND THE RESERVE RATIO FOR THE IMMEDIATELY PRIOR ASSESSMENT PERIOD IS LESS THAN 2 PERCENT \*\*

|                                    | Risk category I | Risk category II | Risk category III | Risk category IV | Large and highly complex institutions |
|------------------------------------|-----------------|------------------|-------------------|------------------|---------------------------------------|
| Initial base assessment rate ..... | 3-7             | 12               | 19                | 30               | 3-30                                  |
| Unsecured debt adjustment .....    | (3.5)-0         | (5)-0            | (5)-0             | (5)-0            | (5)-0                                 |
| Brokered deposit adjustment .....  |                 | 0-10             | 0-10              | 0-10             | 0-10                                  |
| Total base assessment rate .....   | 1.5-7           | 7-22             | 14-29             | 25-40            | 1.5-40                                |

\* All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

\*\* Total base assessment rates do not include the depository institution debt adjustment.

(i) *Risk Category I Total Base Assessment Rate Schedule.* The annual total base assessment rates for institutions in Risk Category I shall range from 1.5 to 7 basis points.

(ii) *Risk Category II Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category II shall range from 7 to 22 basis points.

(iii) *Risk Category III Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category III shall range from 14 to 29 basis points.

(iv) *Risk Category IV Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category IV shall range from 25 to 40 basis points.

(v) *Large and Highly Complex Institutions Total Base Assessment Rate Schedule.* The annual total base assessment rates for all large and highly complex institutions shall range from 1.5 to 40 basis points.

(c) *Assessment rate schedules if the reserve ratio of the DIF for the prior assessment period is equal to or greater than 2 percent and less than 2.5 percent—(1) Initial Base Assessment Rate Schedule.* If the reserve ratio of the DIF for the prior assessment period is equal to or greater than 2 percent and less than 2.5 percent, the initial base assessment rate for an insured depository institution, except as provided in paragraph (e) of this section, shall be the rate prescribed in the following schedule:

INITIAL BASE ASSESSMENT RATE SCHEDULE IF RESERVE RATIO FOR PRIOR ASSESSMENT PERIOD IS EQUAL TO OR GREATER THAN 2 PERCENT BUT LESS THAN 2.5 PERCENT

|                                    | Risk category I | Risk category II | Risk category III | Risk category IV | Large and highly complex institutions |
|------------------------------------|-----------------|------------------|-------------------|------------------|---------------------------------------|
| Initial base assessment rate ..... | 2-6             | 10               | 17                | 28               | 2-28                                  |

\* All amounts for all risk categories are in basis points annually. Initial base rates that are not the minimum or maximum rate will vary between these rates.

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(i) *Risk Category I Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all institutions in Risk Category I shall range from 2 to 6 basis points.

(ii) *Risk Category II, III, and IV Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for Risk Categories II, III, and IV shall be 10, 17, and 28 basis points, respectively.

(iii) All institutions in any one risk category, other than Risk Category I, will be charged the same initial base assessment rate, subject to adjustment as appropriate.

(iv) *Large and Highly Complex Institutions Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all large and highly complex institutions shall range from 2 to 28 basis points.

(2) *Total Base Assessment Rate Schedule after Adjustments.* If the reserve ratio of the DIF for the prior assessment period is equal to or greater than 2 percent and less than 2.5 percent, the total base assessment rates after adjustments for an insured depository institution, except as provided in paragraph (e) of this section, shall be as prescribed in the following schedule.

TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS) \* IF RESERVE RATIO FOR PRIOR ASSESSMENT PERIOD IS EQUAL TO OR GREATER THAN 2 PERCENT BUT LESS THAN 2.5 PERCENT \*\*

|                                    | Risk category<br>I | Risk category<br>II | Risk category<br>III | Risk category<br>IV | Large and<br>highly complex<br>institutions |
|------------------------------------|--------------------|---------------------|----------------------|---------------------|---|
| Initial base assessment rate ..... | 2–6                | 10                  | 17                   | 28                  | 2–38  |
| Unsecured debt adjustment .....    | (3)–0              | (5)–0               | (5)–0                | (5)–0               | (5)–0                                       |
| Brokered deposit adjustment .....  | 0–10               | 0–10                | 0–10                 | 0–10                | 0–10  |
| Total base assessment rate .....   | 1–6                | 5–20                | 12–27                | 23–38               | 1–38  |

\* All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

\*\* Total base assessment rates do not include the depository institution debt adjustment.

(i) *Risk Category I Total Base Assessment Rate Schedule.* The annual total base assessment rates for institutions in Risk Category I shall range from 1 to 6 basis points.

(ii) *Risk Category II Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category II shall range from 5 to 20 basis points.

(iii) *Risk Category III Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category III shall range from 12 to 27 basis points.

(iv) *Risk Category IV Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk

Category IV shall range from 23 to 38 basis points.

(v) *Large and Highly Complex Institutions Total Base Assessment Rate Schedule.* The annual total base assessment rates for all large and highly complex institutions shall range from 1 to 38 basis points.

(d) *Assessment rate schedules if the reserve ratio of the DIF for the prior assessment period is greater than 2.5 percent—*

(1) *Initial Base Assessment Rate Schedule.* If the reserve ratio of the DIF for the prior assessment period is greater than 2.5 percent, the initial base assessment rate for an insured depository institution, except as provided in paragraph (e) of this section, shall be the rate prescribed in the following schedule:

INITIAL BASE ASSESSMENT RATE SCHEDULE IF RESERVE RATIO FOR PRIOR ASSESSMENT PERIOD IS GREATER THAN OR EQUAL TO 2.5 PERCENT

|                                    | Risk category<br>I | Risk category<br>II | Risk category<br>III | Risk category<br>IV | Large and<br>highly complex<br>institutions |
|------------------------------------|--------------------|---------------------|----------------------|---------------------|---|
| Initial base assessment rate ..... | 1–5                | 9                   | 15                   | 25                  | 1–25  |

\* All amounts for all risk categories are in basis points annually. Initial base rates that are not the minimum or maximum rate will vary between these rates.

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(i) *Risk Category I Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all institutions in Risk Category I shall range from 1 to 5 basis points.

(ii) *Risk Category II, III, and IV Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for Risk Categories II, III, and IV shall be 9, 15, and 25 basis points, respectively.

(iii) All institutions in any one risk category, other than Risk Category I, will be charged the same initial base assessment rate, subject to adjustment as appropriate.

(iv) *Large and Highly Complex Institutions Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all large and highly complex institutions shall range from 1 to 25 basis points.

(2) *Total Base Assessment Rate Schedule after Adjustments.* If the reserve ratio of the DIF for the prior assessment period is greater than 2.5 percent, the total base assessment rates after adjustments for an insured depository institution, except as provided in paragraph (e) of this section, shall be the rate prescribed in the following schedule.

TOTAL BASE ASSESSMENT RATE SCHEDULE (AFTER ADJUSTMENTS) \* IF RESERVE RATIO FOR PRIOR ASSESSMENT PERIOD IS GREATER THAN OR EQUAL TO 2.5 PERCENT \*\*

|                                    | Risk category I | Risk category II | Risk category III | Risk category IV | Large and highly complex institutions |
|------------------------------------|-----------------|------------------|-------------------|------------------|---------------------------------------|
| Initial base assessment rate ..... | 1-5             | 9                | 15                | 25               | 1-25                                  |
| Unsecured debt adjustment .....    | (2.5)-0         | (4.5)-0          | (5)-0             | (5)-0            | (5)-0                                 |
| Brokered deposit adjustment .....  | .....           | 0-10             | 0-10              | 0-10             | 0-10                                  |
| Total Base Assessment Rate .....   | 0.5-5           | 4.5-19           | 10-25             | 20-35            | 0.5-35                                |

\* All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

\*\*Total base assessment rates do not include the depository institution debt adjustment.

(i) *Risk Category I Total Base Assessment Rate Schedule.* The annual total base assessment rates for institutions in Risk Category I shall range from 0.5 to 5 basis points.

(ii) *Risk Category II Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category II shall range from 4.5 to 19 basis points.

(iii) *Risk Category III Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category III shall range from 10 to 25 basis points.

(iv) *Risk Category IV Total Base Assessment Rate Schedule.* The annual total base assessment rates for Risk Category IV shall range from 20 to 35 basis points.

(v) *Large and Highly Complex Institutions Total Base Assessment Rate Schedule.* The annual total base assessment rates for all large and highly complex institutions shall range from 0.5 to 35 basis points.

(e) *Assessment Rate Schedules for New Institutions.* New depository institu-

tions, as defined in 327.8(j), shall be subject to the assessment rate schedules as follows:

(1) *Prior to the reserve ratio of the DIF first reaching 1.15 percent after September 30, 2010.* After September 30, 2010, if the reserve ratio of the DIF has not reached 1.15 percent, new institutions shall be subject to the initial and total base assessment rate schedules provided for in paragraph (a) of this section.

(2) *Assessment rate schedules once the DIF reserve ratio first reaches 1.15 percent after September 30, 2010.* After September 30, 2010, once the reserve ratio of the DIF first reaches 1.15 percent, new institutions shall be subject to the initial and total base assessment rate schedules provided for in paragraph (b) of this section, even if the reserve ratio equals or exceeds 2 percent or 2.5 percent.

(f) *Total Base Assessment Rate Schedule adjustments and procedures—(1) Board Rate Adjustments.* The Board may increase or decrease the total base assessment rate schedule in paragraphs

(a) through (d) of this section up to a maximum increase of 2 basis points or a fraction thereof or a maximum decrease of 2 basis points or a fraction thereof (after aggregating increases and decreases), as the Board deems necessary. Any such adjustment shall apply uniformly to each rate in the total base assessment rate schedule. In no case may such rate adjustments result in a total base assessment rate that is mathematically less than zero or in a total base assessment rate schedule that, at any time, is more than 2 basis points above or below the total base assessment schedule for the Deposit Insurance Fund in effect pursuant to paragraph (b) of this section, nor may any one such adjustment constitute an increase or decrease of more than 2 basis points.

(2) *Amount of revenue.* In setting assessment rates, the Board shall take into consideration the following:

(i) Estimated operating expenses of the Deposit Insurance Fund;

(ii) Case resolution expenditures and income of the Deposit Insurance Fund;

(iii) The projected effects of assessments on the capital and earnings of the institutions paying assessments to the Deposit Insurance Fund;

(iv) The risk factors and other factors taken into account pursuant to 12 U.S.C. 1817(b)(1); and

(v) Any other factors the Board may deem appropriate.

(3) *Adjustment procedure.* Any adjustment adopted by the Board pursuant to this paragraph will be adopted by rulemaking, except that the Corporation may set assessment rates as necessary to manage the reserve ratio, within set parameters not exceeding cumulatively 2 basis points, pursuant to paragraph (f)(1) of this section, without further rulemaking.

(4) *Announcement.* The Board shall announce the assessment schedules and the amount and basis for any adjustment thereto not later than 30 days before the quarterly certified statement invoice date specified in §327.3(b) of this part for the first assessment period for which the adjustment shall be effective. Once set, rates will remain in effect until changed by the Board.

[76 FR 10717, Feb. 25, 2011]

#### § 327.11 Special assessments.

(a) *Special assessment imposed on June 30, 2009.* On June 30, 2009, the FDIC shall impose a special assessment on each insured depository institution of 5 basis points based on the institution's total assets less Tier 1 capital as reported on the report of condition for the second assessment period of 2009. The special assessment paid by any institution shall not exceed 10 basis points times the institution's assessment base for the second quarter 2009 risk-based assessment.

(b) *Special assessments after June 30, 2009—(1) Authority for additional special assessments.* After June 30, 2009, if the reserve ratio of the Deposit Insurance Fund is estimated to fall to a level that the Board believes would adversely affect public confidence or to a level which shall be close to or below zero at the end of a calendar quarter, a special assessment of up to 5 basis points on total assets less Tier 1 capital as reported on the report of condition for that calendar quarter may be imposed by a vote of the Board on all insured depository institutions. For any institution, the amount of such a special assessment shall not exceed 10 basis points times the institution's assessment base reported as of the date that the special assessment is imposed.

(2) *Termination of authority.* The authority to impose additional special assessments under this paragraph (b) shall terminate on January 1, 2010, but such termination of authority shall not prevent the Corporation from thereafter collecting any special assessment imposed prior to January 1, 2010.

(3) *Estimation process.* For purposes of any special assessment under this paragraph (b), the FDIC shall estimate the reserve ratio of the Deposit Insurance Fund for the applicable calendar quarter end from available data on, or estimates of, insurance fund assessment income, investment income, operating expenses, other revenue and expenses, and loss provisions, including provisions for anticipated failures. The FDIC will assume that estimated insured deposits will increase during the quarter at the average quarterly rate over the previous four quarters.



(4) *Imposition and announcement of special assessments.* Any special assessment under this paragraph (b) shall be imposed on the last day of a calendar quarter and shall be announced by the end of such quarter. As soon as practicable after announcement, the FDIC will have a notice of the special assessment published in the FEDERAL REGISTER.

(c) *Invoicing of any special assessments.* The FDIC shall advise each insured depository institution of the amount and calculation of any special assessment imposed under paragraph (a) or (b) of this section. This information shall be provided at the same time as the institution's quarterly certified statement invoice for the assessment period in which the special assessment was imposed.

(d) *Payment of any special assessment.* Each insured depository institution shall pay to the Corporation any special assessment imposed under paragraph (a) or (b) of this section in compliance with and subject to the provisions of §§ 327.3, 327.6 and 327.7 of subpart A, and the provisions of subpart B. The payment date for any special assessment shall be the date provided in § 327.3(b)(2) for the institution's quarterly certified statement invoice for the calendar quarter in which the special assessment was imposed.

[74 FR 25644, May 29, 2009]

**§ 327.12 Prepayment of quarterly risk-based assessments.**

(a) *Requirement to prepay assessment.* On December 30, 2009, each insured depository institution shall pay to the FDIC a prepaid assessment, which shall equal its estimated quarterly risk-based assessments aggregated for the fourth quarter of 2009, and all of 2010, 2011, and 2012 (the "prepayment period").

(b) *Calculation of prepaid assessment—*(i) *Prepaid assessment—*(i) *Fourth quarter 2009 and all of 2010.* An institution's prepaid assessment for the fourth quarter of 2009 and for all of 2010 shall be determined by multiplying its prepaid assessment rate as defined in paragraph (b)(2) of this section times the corresponding prepaid assessment base for each quarter as determined pursuant to paragraph (b)(3) of this section.

(ii) *All of 2011 and 2012.* An institution's prepaid assessment for each quarter of 2011 and 2012 shall be determined by multiplying the sum of its prepaid assessment rate as defined in paragraph (b)(2) of this section, plus .75 basis points (which implements the 3 basis point increase in annual assessment rates adopted by the Board on September 29, 2009), times the corresponding prepaid assessment base for each quarter determined pursuant to paragraph (b)(3) of this section.

(2) *Prepaid assessment rate.* For each quarter of the prepayment period, an institution's prepaid assessment rate shall equal the total base assessment rate that the institution would have paid for the third quarter of 2009 had the institution's CAMELS ratings in effect on September 30, 2009, and, where applicable, long-term debt issuer ratings in effect on September 30, 2009, been in effect for the entire third quarter of 2009.

(3) *Prepaid assessment base.* For each quarter of the prepayment period, an institution's prepaid assessment base shall be calculated by increasing its third quarter 2009 assessment base at an annual rate of 5 percent.

(4) *Finality of prepaid assessment.* The prepaid assessment rate and prepaid assessment base defined in paragraphs (b)(2) and (3) of this section shall be determined based upon data in the FDIC's computer systems as of December 24, 2009. Changes to data underlying an institution's adjusted total base assessment rate or assessment base, whether by amendment to a report of condition or otherwise, received by the FDIC after December 24, 2009, shall not affect an institution's prepaid assessment.

(5) *Prepaid assessment rates for mergers and consolidations.* For mergers and consolidations recorded in the FDIC's computer systems no later than December 24, 2009, the acquired institution's prepaid assessment rate under paragraph (b)(2) of this section shall be the prepaid assessment rate of the acquiring institution.

(c) *Invoicing of prepaid assessment.* The FDIC shall advise each insured depository institution of the amount and calculation of its prepaid assessment at the same time the FDIC provides the

institution's quarterly certified statement invoice for the third quarter of 2009. The FDIC will re-invoice through FDICconnect based upon any data changes as provided in paragraph (b)(4) of this section.

(d) *Payment of prepaid assessment.* Each insured depository institution shall pay to the Corporation the amount of its prepaid assessment as required under paragraph (a) of this section in compliance with and subject to the provisions of §§ 327.3 and 327.7 of subpart A.

(1) *Exception to ACH payment.* If an institution's prepaid assessment is greater than \$99 million, the institution shall make payment by wire transfer to the FDIC, rather than by funding its designated deposit account for payment via ACH as provided in § 327.3 of subpart A.

(2) *One-time assessment credits.* The FDIC will not apply an institution's one-time assessment credit under subpart B of this part 327 to reduce an institution's prepaid assessment. The FDIC will apply an institution's remaining one-time assessment credits under Part 327 subpart B to its quarterly deposit insurance assessments before applying its prepaid assessments.

(e) *Use of prepaid assessments.* Prepaid assessments shall only be used to offset regular quarterly risk-based deposit insurance assessments payable under this subpart A. The FDIC will begin offsetting regular quarterly risk-based deposit insurance assessments against prepaid assessments on March 30, 2010. The FDIC will continue to make such offsets until the earlier of the exhaustion of the institution's prepaid assessment or June 30, 2013. Any prepaid assessment remaining after collection of the amount due on June 30, 2013, shall be returned to the institution. If the FDIC, in its discretion, determines that its liquidity needs allow, it may return any remaining prepaid assessment to the institution prior to June 30, 2013.

(f) *Transfers.* An insured depository institution may enter into an agreement to transfer, but not pledge, any portion of that institution's prepaid assessment to another insured depository institution, provided that the parties to the agreement notify the FDIC's Di-

vision of Finance and submit a written agreement, signed by legal representatives of both institutions. The parties must include documentation stating that each representative has the legal authority to bind the institution. The institution transferring its prepaid assessment shall submit the required notice and documentation through FDICconnect. That information will be presented by the FDIC through FDICconnect to the institution acquiring the prepaid assessments for its acceptance. The adjustment to the amount of the prepaid assessment for each institution involved in the transfer will be made in the next assessment invoice that is sent at least 10 days after the FDIC's receipt of acceptance by the institution acquiring the prepaid assessments.

(g) *Prepaid assessments following a merger.* In the event that an insured depository institution merges with, or consolidates into, another insured depository institution, the surviving or resulting institution will be entitled to use any unused portion of the acquired institution's prepaid assessment not otherwise transferred pursuant to paragraph (f) of this section.

(h) *Disposition in the event of failure or termination of insured status.* In the event of failure of an insured depository institution, any amount of its prepaid assessment remaining (other than any amounts needed to satisfy its assessment obligations not yet offset against the prepaid amount) will be refunded to the institution's receiver. In the event that an insured depository institution's insured status terminates, any amount of its prepaid assessment remaining (other than any amounts needed to satisfy its assessment obligations not yet offset against the prepaid amount) will be refunded to the institution, subject to the provisions of § 327.6 of subpart A.

(i) *Exemptions—* (1) *Exemption without application.* The FDIC, after consultation with an institution's primary federal regulator, will exercise its discretion as supervisor and insurer to exempt an institution from the prepayment requirement under paragraph (a) of this section if the FDIC determines that the prepayment would adversely affect the safety and soundness of that

institution. No application is required for this review and the FDIC will notify any affected institution of its exemption by November 23, 2009.

(2) *Application for exemption.* An institution may also apply to the FDIC for an exemption from the prepayment requirement under paragraph (a) of this section if the prepayment would significantly impair the institution's liquidity, or would otherwise create extraordinary hardship. Written applications for exemption from the prepayment obligation must be submitted to the Director of the Division of Supervision and Consumer Protection on or before December 1, 2009, by electronic mail ([prepaidassessment@fdic.gov](mailto:prepaidassessment@fdic.gov)) or fax (202-898-6676). The application must contain a full explanation of the need for the exemption and provide supporting documentation, including current financial statements, cash flow projections, and any other relevant information, including any information the FDIC may request. The FDIC will exercise its discretion in deciding whether to exempt an institution that files an application for exemption. An application shall be deemed denied unless the FDIC notifies an applying institution by December 15, 2009, either that the institution is exempt from the prepaid assessment or the FDIC has postponed determination under paragraph (i)(4) of this section. The FDIC's denial of applications for exemption will be final and not subject to further agency review.

(3) *Application for withdrawal of exemption.* An institution that has received an exemption under paragraph (i)(1) of this section may request that the FDIC withdraw the exemption. Written applications for withdrawal of exemption must be submitted to the Director of the Division of Supervision and Consumer Protection on or before December 1, 2009, by electronic mail ([prepaidassessment@fdic.gov](mailto:prepaidassessment@fdic.gov)) or fax (202-898-6676). The application must contain a full explanation of the reasons the exemption is not needed and provide supporting documentation, including current financial statements, cash flow projections, and any other relevant information, including any information the FDIC may request. The FDIC, after consultation with the institution's pri-

mary Federal regulator, will exercise its discretion in deciding whether to withdraw the exemption. The FDIC will notify an institution of its decision to withdraw the exemption by December 15, 2009; that determination will be final and not subject to further agency review. An application shall be deemed denied unless the FDIC notifies an applying institution by December 15, 2009, that the exemption is withdrawn.

(4) *Postponement of determination.* The FDIC may postpone making a determination on any application for exemption filed under paragraph (i)(2) of this section until no later than January 14, 2010. An institution notified by the FDIC of such postponement will not have to pay the prepaid assessment calculated under paragraph (b) of this section on December 30, 2009. If the FDIC denies the application for exemption, the FDIC will notify the institution of the denial and of the date by which the institution must pay the prepaid assessment. The due date for payment of the prepaid assessment after such a denial will be no less than 15 days after the date of the notice of denial.

(5) *Obligation to pay third quarter 2009 assessment.* Any institution exempted from the prepayment requirement or any institution whose application for exemption has been postponed under this section shall pay to the Corporation on December 30, 2009, any amount due for the third quarter of 2009 as shown on the certified statement invoice for that quarter.

[74 FR 59065, Nov. 17, 2009]

#### **§ 327.15 Emergency special assessments.**

(a) *Emergency special assessment imposed on June 30, 2009.* On June 30, 2009, the FDIC shall impose an emergency special assessment of 20 basis points on each insured depository institution based on the institution's assessment base calculated pursuant to § 327.5 for the second assessment period of 2009.

(b) *Emergency special assessments after June 30, 2009.* After June 30, 2009, if the reserve ratio of the Deposit Insurance Fund is estimated to fall to a level that the Board believes would adversely affect public confidence or to a

level which shall be close to zero or negative at the end of a calendar quarter, an emergency special assessment of up to 10 basis points may be imposed by a vote of the Board on all insured depository institutions based on each institution's assessment base calculated pursuant to §327.5 for the corresponding assessment period.

(1) *Estimation process.* For purposes of any emergency special assessment under this paragraph (b), the FDIC shall estimate the reserve ratio of the Deposit Insurance Fund for the applicable calendar quarter end from available data on, or estimates of, insurance fund assessment income, investment income, operating expenses, other revenue and expenses, and loss provisions, including provisions for anticipated failures. The FDIC will assume that estimated insured deposits will increase during the quarter at the average quarterly rate over the previous four quarters.

(2) *Imposition and announcement of emergency special assessments.* Any emergency special assessment under this paragraph (b) shall be on the last day of a calendar quarter and shall be announced by the end of such quarter. As soon as practicable after announcement, the FDIC will have a notice published in the FEDERAL REGISTER of the emergency special assessment.

(c) *Invoicing of any emergency special assessments.* The FDIC shall advise each insured depository institution of the amount and calculation of any emergency special assessment imposed under paragraph (a) or (b) of this section. This information shall be provided at the same time as the institution's quarterly certified statement invoice for the assessment period in which the emergency special assessment was imposed.

(d) *Payment of any emergency special assessment.* Each insured depository institution shall pay to the Corporation any emergency special assessment imposed under paragraph (a) or (b) of this section in compliance with and subject to the provisions of §§327.3, 327.6 and 327.7 of subpart A, and the provisions of subpart B. The payment date for any emergency special assessment shall be the date provided in §327.3(b)(2) for the institution's quarterly certified state-

ment invoice for the calendar quarter in which the emergency special assessment was imposed.

[74 FR 9341, Mar. 3, 2009]

#### APPENDIX A TO SUBPART A OF PART 327—METHOD TO DERIVE PRICING MULTIPLIERS AND UNIFORM AMOUNT

##### I. INTRODUCTION

The uniform amount and pricing multipliers are derived from:

- A model (the Statistical Model) that estimates the probability that a Risk Category I institution will be downgraded to a composite CAMELS rating of 3 or worse within one year;
- Minimum and maximum downgrade probability cutoff values, based on data from June 30, 2008, that will determine which small institutions will be charged the minimum and maximum initial base assessment rates applicable to Risk Category I;
- The minimum initial base assessment rate for Risk Category I, equal to 12 basis points, and
- The maximum initial base assessment rate for Risk Category I, which is four basis points higher than the minimum rate.

##### II. THE STATISTICAL MODEL

The Statistical Model is defined in equations 1 and 3 below.

###### Equation 1

$\text{Downgrade}(0,1)_{i,t} = \beta_0 + \beta_1 (\text{Leverage ratio}_t) + \beta_2 (\text{Loans past due 30 to 89 days ratio}_{i,t}) + \beta_3 (\text{Nonperforming asset ratio}_{i,t}) + \beta_4 (\text{Net loan charge-off ratio}_{i,t}) + \beta_5 (\text{Net income before taxes ratio}_{i,t}) + \beta_6 (\text{Adjusted brokered deposit ratio}_{i,t}) + \beta_7 (\text{Weighted average CAMELS component rating}_{i,t})$  where  $\text{Downgrade}(0,1)_{i,t}$  (the dependent variable—the event being explained) is the incidence of downgrade from a composite rating of 1 or 2 to a rating of 3 or worse during an on-site examination for an institution  $i$  between 3 and 12 months after time  $t$ . Time  $t$  is the end of a year within the multi-year period over which the model was estimated (as explained below). The dependent variable takes a value of 1 if a downgrade occurs and 0 if it does not.

The explanatory variables (regressors) in the model are six financial ratios and a weighted average of the “C,” “A,” “M,” “E” and “L” component ratings. The six financial ratios included in the model are:

- Leverage ratio
- Loans past due 30–89 days/Gross assets
- Nonperforming assets/Gross assets
- Net loan charge-offs/Gross assets

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- Net income before taxes/Risk-weighted assets
- Brokered deposits/domestic deposits above the 10 percent threshold, adjusted for the asset growth rate factor

Table A.1 defines these six ratios along with the weighted average of CAMELS component ratings. The adjusted brokered deposit ratio ( $B_{i,T}$ ) is calculated by multiplying the ratio of brokered deposits to domestic deposits above the 10 percent threshold by an

asset growth rate factor that ranges from 0 to 1 as shown in Equation 2 below. The asset growth rate factor ( $A_{i,T}$ ) is calculated by subtracting 0.4 from the four-year cumulative gross asset growth rate (expressed as a number rather than as a percentage), adjusted for mergers and acquisitions, and multiplying the remainder by 3%. The factor cannot be less than 0 or greater than 1.

Equation 2

$$B_{i,T} = \left( \frac{\text{Brokered Deposits}_{i,T} - 0.10}{\text{Domestic Deposits}_{i,T}} \right) * A_{i,T}$$

$$\text{where } A_{i,T} = \left[ \left( \frac{\text{GrossAssets}_{i,T} - \text{GrossAssets}_{i,T-4}}{\text{GrossAssets}_{i,T-4}} - 0.4 \right) * \frac{10}{3} \right], \text{ subject to } 0 \leq A_{i,T} \leq 1 \text{ and } B_{i,T} \geq 0.$$

The component rating for sensitivity to market risk (the “S” rating) is not available for years prior to 1997. As a result, and as described in Table A.1, the Statistical Model is estimated using a weighted average of five component ratings excluding the “S” component. Delinquency and non-accrual data on government guaranteed loans are not available before 1993 for Call Report filers and before the third quarter of 2005 for TFR filers. As a result, and as also described in Table A.1, the Statistical Model is estimated with-

out deducting delinquent or past-due government guaranteed loans from either the loans past due 30–89 days to gross assets ratio or the nonperforming assets to gross assets ratio. Reciprocal deposits are not presently reported in the Call Report or TFR. As a result, and as also described in Table A.1, the Statistical Model is estimated without deducting reciprocal deposits from brokered deposits in determining the adjusted brokered deposit ratio.

TABLE A.1—DEFINITIONS OF REGRESSORS

| Regressor   | Description   |
|---|---|
| Leverage ratio (%) .....                                | Tier 1 capital for Prompt Corrective Action (PCA) divided by adjusted average assets based on the definition for prompt corrective action.  |
| Loans Past Due 30–89 Days/Gross Assets (%) ....         | Total loans and lease financing receivables past due 30 through 89 days and still accruing interest divided by gross assets (gross assets equal total assets plus allowance for loan and lease financing receivable losses and allocated transfer risk).                        |
| Nonperforming Assets/Gross Assets (%) .....             | Sum of total loans and lease financing receivables past due 90 or more days and still accruing interest, total nonaccrual loans and lease financing receivables, and other real estate owned divided by gross assets.   |
| Net Loan Charge-Offs/Gross Assets (%) .....             | Total charged-off loans and lease financing receivables debited to the allowance for loan and lease losses less total recoveries credited to the allowance for loan and lease losses for the most recent twelve months divided by gross assets.                                 |
| Net Income before Taxes/Risk-Weighted Assets (%) .....  | Income before income taxes and extraordinary items and other adjustments for the most recent twelve months divided by risk-weighted assets.   |
| Adjusted brokered deposit ratio (%) .....               | Brokered deposits divided by domestic deposits less 0.10 multiplied by the asset growth rate factor (which is the term $A_{i,T}$ as defined in equation 2 above) that ranges between 0 and 1.   |
| Weighted Average of C, A, M, E and L Component Ratings. | The weighted sum of the “C,” “A,” “M,” “E” and “L” CAMELS components, with weights of 28 percent each for the “C” and “M” components, 22 percent for the “A” component, and 11 percent each for the “E” and “L” components. (For the regression, the “S” component is omitted.) |

The financial variable regressors used to estimate the downgrade probabilities are obtained from quarterly reports of condition (Reports of Condition and Income and Thrift Financial Reports). The weighted average of

the “C,” “A,” “M,” “E” and “L” component ratings regressor is based on component ratings obtained from the most recent bank examination conducted within 24 months before the date of the report of condition.

The Statistical Model uses ordinary least squares (OLS) regression to estimate downgrade probabilities. The model is estimated with data from a multi-year period (as explained below) for all institutions in Risk Category I, except for institutions established within five years before the date of the report of condition.

The OLS regression estimates coefficients,  $\beta_j$  for a given regressor  $j$  and a constant amount,  $\beta_0$ , as specified in equation 1. As shown in equation 3 below, these coefficients are multiplied by values of risk measures at time  $T$ , which is the date of the report of condition corresponding to the end of the quarter for which the assessment rate is computed. The sum of the products is then added to the constant amount to produce an estimated probability,  $d_{iT}$ , that an institution will be downgraded to 3 or worse within 3 to 12 months from time  $T$ .

The risk measures are financial ratios as defined in Table A.1, except that: (1) The loans past due 30 to 89 days ratio and the nonperforming asset ratio are adjusted to exclude the maximum amount recoverable from the U.S. Government, its agencies or government-sponsored agencies, under guarantee or insurance provisions; (2) the weighted sum of six CAMELS component ratings is used, with weights of 25 percent each for the “C” and “M” components, 20 percent for the “A” component, and 10 percent each for the “E,” “L,” and “S” components; and (3) reciprocal deposits are deducted from brokered deposits in determining the adjusted brokered deposit ratio.

#### Equation 3

$$d_{iT} = \beta_0 + \beta_1 (\text{Leverage ratio}_{iT}) + \beta_2 (\text{Loans past due 30 to 89 days ratio}_{iT}) + \beta_3 (\text{Nonperforming asset ratio}_{iT}) + \beta_4 (\text{Net loan charge-off ratio}_{iT}) + \beta_5 (\text{Net income before taxes ratio}_{iT}) + \beta_6 (\text{Adjusted brokered deposit ratio}_{iT}) + \beta_7 (\text{Weighted average CAMELS component rating}_{iT})$$

### III. MINIMUM AND MAXIMUM DOWNGRADE PROBABILITY CUTOFF VALUES

The pricing multipliers are also determined by minimum and maximum downgrade probability cutoff values, which will be computed as follows:

- The minimum downgrade probability cutoff value will be the maximum downgrade probability among the twenty-five percent of

all small insured institutions in Risk Category I (excluding new institutions) with the lowest estimated downgrade probabilities, computed using values of the risk measures as of June 30, 2008.<sup>1,2</sup> The minimum downgrade probability cutoff value is 0.0182.

- The maximum downgrade probability cutoff value will be the minimum downgrade probability among the fifteen percent of all small insured institutions in Risk Category I (excluding new institutions) with the highest estimated downgrade probabilities, computed using values of the risk measures as of June 30, 2008. The maximum downgrade probability cutoff value is 0.1506.

### IV. DERIVATION OF UNIFORM AMOUNT AND PRICING MULTIPLIERS

The uniform amount and pricing multipliers used to compute the annual base assessment rate in basis points,  $P_{iT}$ , for any such institution  $i$  at a given time  $T$  will be determined from the Statistical Model, the minimum and maximum downgrade probability cutoff values, and minimum and maximum initial base assessment rates in Risk Category I as follows:

#### Equation 4

$$P_{iT} = \alpha_0 + \alpha_1 * d_{iT} \text{ subject to } \text{Min} \leq P_{iT} \leq \text{Min} + 4$$

where  $\alpha_0$  and  $\alpha_1$  are a constant term and a scale factor used to convert  $d_{iT}$  (the estimated downgrade probability for institution  $i$  at a given time  $T$  from the Statistical Model) to an assessment rate, respectively, and  $\text{Min}$  is the minimum initial base assessment rate expressed in basis points. ( $P_{iT}$  is expressed as an annual rate, but the actual rate applied in any quarter will be  $P_{iT}/4$ .) The maximum initial base assessment rate is 4 basis points above the minimum ( $\text{Min} + 4$ )

Solving equation 4 for minimum and maximum initial base assessment rates simultaneously,

$$\text{Min} = \alpha_0 + \alpha_1 * 0.0182 \text{ and } \text{Min} + 4 = \alpha_0 + \alpha_1 * 0.1506$$

where 0.0182 is the minimum downgrade probability cutoff value and 0.1506 is the maximum downgrade probability cutoff value, results in values for the constant amount,  $\alpha_0$  and the scale factor,  $\alpha_1$ :

#### Equation 5

<sup>1</sup>As used in this context, a “new institution” means an institution that has been chartered as a bank or thrift for less than five years.

<sup>2</sup>For purposes of calculating the minimum and maximum downgrade probability cutoff values, institutions that have less than \$100,000 in domestic deposits are assumed to have no brokered deposits.

$$\alpha_0 = \text{Min} - \frac{4 * 0.0182}{(0.1506 - 0.0182)} = \text{Min} - 0.550$$

and Equation 6

$$\alpha_1 = \frac{4}{(0.1506 - 0.0182)} = 30.211$$

Substituting equations 3, 5 and 6 into equation 4 produces an annual initial base assessment rate for institution *i* at time *T*,  $P_{iT}$ , in terms of the uniform amount, the pricing multipliers and the ratios and weighted average CAMELS component rating referred to in 12 CFR 327.9(d)(2)(i):

Equation 7

$$P_{iT} = [(\text{Min} - 0.550) + 30.211 * \beta_0] + 30.211 * [\beta_1 (\text{Leverage ratio}_T)] + 30.211 * [\beta_2 (\text{Loans past due 30 to 89 days ratio}_T)] + 30.211 * [\beta_3 (\text{Nonperforming asset ratio}_T)] + 30.211 * [\beta_4 (\text{Net loan charge-off ratio}_T)] + 30.211 * [\beta_5 (\text{Net income before taxes ratio}_T)] + 30.211 * [\beta_6 (\text{Adjusted brokered deposit ratio}_T)] + 30.211 * [\beta_7 (\text{Weighted average CAMELS component rating}_T)]$$

again subject to  $\text{Min} \leq P_{iT} \leq \text{Min} + 4$

where  $(\text{Min} - 0.550) + 30.211 * \beta_0$  equals the uniform amount,  $30.211 * \beta_j$  is a pricing multiplier for the associated risk measure *j*, and *T*

is the date of the report of condition corresponding to the end of the quarter for which the assessment rate is computed.

#### V. UPDATING THE STATISTICAL MODEL, UNIFORM AMOUNT, AND PRICING MULTIPLIERS

The initial Statistical Model is estimated using year-end financial ratios and the weighted average of the “C,” “A,” “M,” “E” and “L” component ratings over the 1988 to 2006 period and downgrade data from the 1989 to 2007 period. The FDIC may, from time to time, but no more frequently than annually, re-estimate the Statistical Model with updated data and publish a new formula for determining initial base assessment rates—equation 7—based on updated uniform amounts and pricing multipliers. However, the minimum and maximum downgrade probability cutoff values will not change without additional notice-and-comment rulemaking. The period covered by the analysis will be lengthened by one year each year; however, from time to time, the FDIC may drop some earlier years from its analysis.

#### VI. DESCRIPTION OF SCORECARD MEASURES

| Scorecard measures <sup>1</sup>   | Description  |
|---|--|
| Leverage ratio .....  | Tier 1 capital for Prompt Corrective Action (PCA) divided by adjusted average assets based on the definition for prompt corrective action.   |
| Concentration Measure for Large Insured depository institutions (excluding Highly Complex Institutions).<br>(1) Higher-Risk Assets/Tier 1 Capital and Reserves. | The concentration score for large institutions is the higher of the following two scores:<br>Sum of construction and land development (C&D) loans (funded and unfunded), higher-risk C&I loans (funded and unfunded), nontraditional mortgages, higher-risk consumer loans, and higher-risk securitizations divided by Tier 1 capital and reserves. See Appendix C for the detailed description of the ratio.<br>The measure is calculated in the following steps:<br>(1) Concentration levels (as a ratio to Tier 1 capital and reserves) are calculated for each broad portfolio category:<br><ul style="list-style-type: none"> <li>• C&amp;D,</li> <li>• Other commercial real estate loans,</li> <li>• First lien residential mortgages (including non-agency residential mortgage-backed securities),</li> <li>• Closed-end junior liens and home equity lines of credit (HELOCs),</li> <li>• Commercial and industrial loans,</li> <li>• Credit card loans, and</li> <li>• Other consumer loans.</li> </ul> |
| (2) Growth-Adjusted Portfolio Concentrations ....   | (2) Risk weights are assigned to each loan category based on historical loss rates.<br>(3) Concentration levels are multiplied by risk weights and squared to produce a risk-adjusted concentration ratio for each portfolio.<br>(4) Three-year merger-adjusted portfolio growth rates are then scaled to a growth factor of 1 to 1.2 where a 3-year cumulative growth rate of 20 percent or less equals a factor of 1 and a growth rate of 80 percent or greater equals a factor of 1.2. If three years of data are not available, a growth factor of 1 will be assigned.   |

| Scorecard measures <sup>1</sup>                                | Description   |
|--|---|
| Concentration Measure for Highly Complex Institutions ..       | <p>(5) The risk-adjusted concentration ratio for each portfolio is multiplied by the growth factor and resulting values are summed. See Appendix C for the detailed description of the measure.</p> <p>Concentration score for highly complex institutions is the highest of the following three scores:</p> <p>Sum of C&amp;D loans (funded and unfunded), higher-risk C&amp;I loans (funded and unfunded), nontraditional mortgages, higher-risk consumer loans, and higher-risk securitizations divided by Tier 1 capital and reserves. See Appendix C for the detailed description of the measure.</p>  |
| (1) Higher-Risk Assets/Tier 1 Capital and Reserves.            |   |
| (2) Top 20 Counterparty Exposure/Tier 1 Capital and Reserves.  | <p>Sum of the 20 largest total exposure amounts to counterparties divided by Tier 1 capital and reserves. The total exposure amount is equal to the sum of the institution's exposure amounts to one counterparty (or borrower) for derivatives, securities financing transactions (SFTs), and cleared transactions, and its gross lending exposure (including all unfunded commitments) to that counterparty (or borrower). A counterparty includes an entity's own affiliates. Exposures to entities that are affiliates of each other are treated as exposures to one counterparty (or borrower). Counterparty exposure excludes all counterparty exposure to the U.S. government and departments or agencies of the U.S. government that is unconditionally guaranteed by the full faith and credit of the United States. The exposure amount for derivatives, including OTC derivatives, cleared transactions that are derivative contracts, and netting sets of derivative contracts, must be calculated using the methodology set forth in 12 CFR 324.34(a), but without any reduction for collateral other than cash collateral that is all or part of variation margin and that satisfies the requirements of 12 CFR 324.10(c)(4)(ii)(C)(1)–(7). The exposure amount associated with SFTs, including cleared transactions that are SFTs, must be calculated using the standardized approach set forth in 12 CFR 324.37(b) or (c). For both derivatives and SFT exposures, the exposure amount to central counterparties must also include the default fund contribution.<sup>2</sup></p> |
| (3) Largest Counterparty Exposure/Tier 1 Capital and Reserves. | <p>The largest total exposure amount to one counterparty divided by Tier 1 capital and reserves. The total exposure amount is equal to the sum of the institution's exposure amounts to one counterparty (or borrower) for derivatives, SFTs, and cleared transactions, and its gross lending exposure (including all unfunded commitments) to that counterparty (or borrower). A counterparty includes an entity's own affiliates. Exposures to entities that are affiliates of each other are treated as exposures to one counterparty (or borrower). Counterparty exposure excludes all counterparty exposure to the U.S. government and departments or agencies of the U.S. government that is unconditionally guaranteed by the full faith and credit of the United States. The exposure amount for derivatives, including OTC derivatives, cleared transactions that are derivative contracts, and netting sets of derivative contracts, must be calculated using the methodology set forth in 12 CFR 324.34(a), but without any reduction for collateral other than cash collateral that is all or part of variation margin and that satisfies the requirements of 12 CFR 324.10(c)(4)(ii)(C)(1)–(7). The exposure amount associated with SFTs, including cleared transactions that are SFTs, must be calculated using the standardized approach set forth in 12 CFR 324.37(b) or (c). For both derivatives and SFT exposures, the exposure amount to central counterparties must also include the default fund contribution.<sup>2</sup></p>  |
| Core Earnings/Average Quarter-End Total Assets .....           | <p>Core earnings are defined as net income less extraordinary items and tax-adjusted realized gains and losses on available-for-sale (AFS) and held-to-maturity (HTM) securities, adjusted for mergers. The ratio takes a four-quarter sum of merger-adjusted core earnings and divides it by an average of five quarter-end total assets (most recent and four prior quarters). If four quarters of data on core earnings are not available, data for quarters that are available will be added and annualized. If five quarters of data on total assets are not available, data for quarters that are available will be averaged.</p>   |
| Credit Quality Measure .....                                   | <p>The credit quality score is the higher of the following two scores:</p>  |



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| Scorecard measures <sup>1</sup>                                   | Description  |
|---|--|
| (1) Criticized and Classified Items/Tier 1 Capital and Reserves.  | Sum of criticized and classified items divided by the sum of Tier 1 capital and reserves. Criticized and classified items include items an institution or its primary federal regulator have graded "Special Mention" or worse and include retail items under Uniform Retail Classification Guidelines, securities, funded and unfunded loans, other real estate owned (ORE), other assets, and marked-to-market counterparty positions, less credit valuation adjustments. <sup>3</sup> Criticized and classified items exclude loans and securities in trading books, and the amount recoverable from the U.S. government, its agencies, or government-sponsored enterprises, under guarantee or insurance provisions. |
| (2) Underperforming Assets/Tier 1 Capital and Reserves.           | Sum of loans that are 30 days or more past due and still accruing interest, nonaccrual loans, restructured loans (including restructured 1–4 family loans), and ORE, excluding the maximum amount recoverable from the U.S. government, its agencies, or government-sponsored enterprises, under guarantee or insurance provisions, divided by a sum of Tier 1 capital and reserves.   |
| Core Deposits/Total Liabilities .....                             | Total domestic deposits excluding brokered deposits and uninsured non-brokered time deposits divided by total liabilities.   |
| Balance Sheet Liquidity Ratio .....                               | Sum of cash and balances due from depository institutions, federal funds sold and securities purchased under agreements to resell, and the market value of available for sale and held to maturity agency securities (excludes agency mortgage-backed securities but includes all other agency securities issued by the U.S. Treasury, U.S. government agencies, and U.S. government-sponsored enterprises) divided by the sum of federal funds purchased and repurchase agreements, other borrowings (including FHLB) with a remaining maturity of one year or less, 5 percent of insured domestic deposits, and 10 percent of uninsured domestic and foreign deposits. <sup>4</sup>                                    |
| Potential Losses/Total Domestic Deposits (Loss Severity Measure). | Potential losses to the DIF in the event of failure divided by total domestic deposits. Appendix D describes the calculation of the loss severity measure in detail.   |
| Market Risk Measure for Highly Complex Institutions .....         | The market risk score is a weighted average of the following three scores:   |
| (1) Trading Revenue Volatility/Tier 1 Capital .....               | Trailing 4-quarter standard deviation of quarterly trading revenue (merger-adjusted) divided by Tier 1 capital.  |
| (2) Market Risk Capital/Tier 1 Capital .....                      | Market risk capital divided by Tier 1 capital. <sup>5</sup>  |
| (3) Level 3 Trading Assets/Tier 1 Capital .....                   | Level 3 trading assets divided by Tier 1 capital.  |
| Average Short-term Funding/Average Total Assets .....             | Quarterly average of federal funds purchased and repurchase agreements divided by the quarterly average of total assets as reported on Schedule RC–K of the Call Reports   |

<sup>1</sup>The FDIC retains the flexibility, as part of the risk-based assessment system, without the necessity of additional notice-and-comment rulemaking, to update the minimum and maximum cutoff values for all measures used in the scorecard. The FDIC may update the minimum and maximum cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio in order to maintain an approximately similar distribution of higher-risk assets to Tier 1 capital and reserves ratio scores as reported prior to April 1, 2013, or to avoid changing the overall amount of assessment revenue collected. 76 FR 10672, 10700 (February 25, 2011). The FDIC will review changes in the distribution of the higher-risk assets to Tier 1 capital and reserves ratio scores and the resulting effect on total assessments and risk differentiation between banks when determining changes to the cutoffs. The FDIC may update the cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio more frequently than annually. The FDIC will provide banks with a minimum one quarter advance notice of changes in the cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio with their quarterly deposit insurance invoice.

<sup>2</sup>EAD and SFTs are defined and described in the compilation issued by the Basel Committee on Banking Supervision in its June 2006 document, "International Convergence of Capital Measurement and Capital Standards." The definitions are described in detail in Annex 4 of the document. Any updates to the Basel II capital treatment of counterparty credit risk would be implemented as they are adopted. <http://www.bis.org/publ/bcbs128.pdf>

<sup>3</sup>A marked-to-market counterparty position is equal to the sum of the net marked-to-market derivative exposures for each counterparty. The net marked-to-market derivative exposure equals the sum of all positive marked-to-market exposures net of legally enforceable netting provisions and net of all collateral held under a legally enforceable CSA plus any exposure where excess collateral has been posted to the counterparty. For purposes of the Criticized and Classified Items/Tier 1 Capital and Reserves definition a marked-to-market counterparty position less any credit valuation adjustment can never be less than zero.

<sup>4</sup>Deposit runoff rates for the balance sheet liquidity ratio reflect changes issued by the Basel Committee on Banking Supervision in its December 2010 document, "Basel III: International Framework for liquidity risk measurement, standards, and monitoring," <http://www.bis.org/publ/bcbs188.pdf>.

<sup>5</sup>Market risk capital is defined in Appendix C of part 325 of the FDIC Rules and Regulations or subpart F of Part 324 of the FDIC Rules and Regulations, as applicable.

[74 FR 9557, Mar. 4, 2009, as amended at 76 FR 10720, Feb. 25, 2011; 76 FR 17521, Mar. 30, 2011; 77 FR 66015, Oct. 31, 2012; 78 FR 55904, Sept. 10, 2013; 79 FR 70437, Nov. 26, 2014]

APPENDIX B TO SUBPART A OF PART 327—CONVERSION OF SCORECARD MEASURES INTO SCORE

1. *Weighted Average CAMELS Rating*

Weighted average CAMELS ratings between 1 and 3.5 are assigned a score between 25 and 100 according to the following equation:

$$S = 25 + [(20/3) * (C^2 - 1)],$$

where:

$S$  = the weighted average CAMELS score; and  
 $C$  = the weighted average CAMELS rating.

2. *Other Scorecard Measures*

For certain scorecard measures, a lower ratio implies lower risk and a higher ratio implies higher risk. These measures include:

- Concentration measure;
- Credit quality measure;
- Market risk measure;
- Average short-term funding to average total assets ratio; and
- Potential losses to total domestic deposits ratio (loss severity measure).

For those measures, a value between the minimum and maximum cutoff values is converted linearly to a score between 0 and 100, according to the following formula:

$$S = (V - \text{Min}) * 100 / (\text{Max} - \text{Min}),$$

where  $S$  is score (rounded to three decimal points),  $V$  is the value of the measure,  $\text{Min}$  is the minimum cutoff value and  $\text{Max}$  is the maximum cutoff value.

For other scorecard measures, a lower value represents higher risk and a higher value represents lower risk. These measures include:

- Leverage ratio;

- Core earnings to average quarter-end total assets ratio;
- Core deposits to total liabilities ratio; and
- Balance sheet liquidity ratio.

For those measures, a value between the minimum and maximum cutoff values is converted linearly to a score between 0 and 100, according to the following formula:

$$S = (\text{Max} - V) * 100 / (\text{Max} - \text{Min}),$$

where  $S$  is score (rounded to three decimal points),  $V$  is the value of the measure,  $\text{Max}$  is the maximum cutoff value and  $\text{Min}$  is the minimum cutoff value.

[76 FR 10720, Feb. 25, 2011]

APPENDIX C TO SUBPART A OF PART 327

I. CONCENTRATION MEASURES

The concentration score for large banks is the higher of the higher-risk assets to Tier 1 capital and reserves score or the growth-adjusted portfolio concentrations score.<sup>1</sup> The concentration score for highly complex institutions is the highest of the higher-risk assets to Tier 1 capital and reserves score, the Top 20 counterparty exposure to Tier 1 capital and reserves score, or the largest counterparty to Tier 1 capital and reserves score. The higher-risk assets to Tier 1 capital and reserves ratio and the growth-adjusted portfolio concentration measure are described herein.

A. *Higher-Risk Assets/Tier 1 Capital and Reserves*

The higher-risk assets to Tier 1 capital and reserves ratio is the sum of the concentrations in each of five risk areas described below and is calculated as:

$$H_i = \sum_{k=1}^5 \left( \frac{\text{Amount of Exposure}_{i,k}}{\text{Tier 1 Capital} + \text{Reserves}_i} \right)$$

Where:

$H_i$  is bank  $i$ 's higher-risk concentration measure and  $k$  is a risk area.<sup>2</sup> The five risk areas ( $k$ ) are: construction and land development (C&D) loans; higher-risk commercial and industrial (C&I) loans and securities; higher-risk consumer loans; nontraditional mortgage loans; and higher-risk securitizations.

<sup>1</sup>For the purposes of this Appendix, the term "bank" means insured depository institution.

<sup>2</sup>The higher-risk concentration ratio is rounded to two decimal points.

1. Construction and Land Development Loans

Construction and land development loans include construction and land development loans outstanding and unfunded commitments to fund construction and land development loans, whether irrevocable or unconditionally cancellable.<sup>3</sup>

<sup>3</sup>Construction and land development loans are as defined in the instructions to Call Report Schedule RC-C Part I—Loans and Leases, as they may be amended from time

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### 2. Higher-Risk Commercial and Industrial (C&I) Loans and Securities

#### Definitions

##### Higher-Risk C&I Loans and Securities

Higher-risk C&I loans and securities are:

(a) All commercial and industrial (C&I) loans (including funded amounts and the amount of unfunded commitments, whether irrevocable or unconditionally cancellable) owed to the reporting bank (*i.e.*, the bank filing its report of condition and income, or Call Report) by a higher-risk C&I borrower, as that term is defined herein, regardless when the loans were made;<sup>4 5</sup> and

(b) All securities, except securities classified as trading book, issued by a higher-risk C&I borrower, as that term is defined herein, that are owned by the reporting bank, without regard to when the securities were purchased; however, higher-risk C&I loans and securities exclude:

(a) The maximum amount that is recoverable from the U.S. government under guarantee or insurance provisions;

(b) Loans (including syndicated or participated loans) that are fully secured by cash collateral as provided herein;

(c) Loans that are eligible for the asset-based lending exclusion, described herein,

to time, and include items reported on line items RC-C 1.a.1 (1-4 family residential construction loans), RC-C 1.a.2. (Other construction loans and all land development and other land loans), and RC-O M.10.a (Total unfunded commitments to fund construction, land development, and other land loans secured by real estate), and exclude RC-O M.10.b (Portion of unfunded commitments to fund construction, land development and other loans that are guaranteed or insured by the U.S. government, including the FDIC), RC-O M.13.a (Portion of funded construction, land development, and other land loans guaranteed or insured by the U.S. government, excluding FDIC loss sharing agreements), RC-M 13a.1.a.1 (1-4 family construction and land development loans covered by loss sharing agreements with the FDIC), and RC-M 13a.1.a.2 (Other construction loans and all land development loans covered by loss sharing agreements with the FDIC).

<sup>4</sup>Commercial and industrial loans are as defined as commercial and industrial loans in the instructions to Call Report Schedule RC-C Part I—Loans and Leases, as they may be amended from time to time. This definition includes purchased credit impaired loans and overdrafts.

<sup>5</sup>Unfunded commitments are defined as unused commitments, as this term is defined in the instructions to Call Report Schedule RC-L, Derivatives and Off-Balance Sheet Items, as they may be amended from time to time.

provided the bank's primary federal regulator (PFR) has not cited a criticism (included in the Matters Requiring Attention, or MRA) of the bank's controls or administration of its asset-based loan portfolio; and

(d) Loans that are eligible for the floor plan lending exclusion, described herein, provided the bank's PFR has not cited a criticism (included in the MRA) of the bank's controls or administration of its floor plan loan portfolio.

##### Higher-Risk C&I Borrower

A "higher-risk C&I borrower" is a borrower that:

(a) Owes the reporting bank on a C&I loan originally made on or after April 1, 2013, if:

(i) The C&I loan has an original amount (including funded amounts and the amount of unfunded commitments, whether irrevocable or unconditionally cancellable) of at least \$5 million;

(ii) The loan meets the purpose and materiality tests described herein; and

(iii) When the loan is made, the borrower meets the leverage test described herein; or

(b) Obtains a refinance, as that term is defined herein, of an existing C&I loan, where the refinance occurs on or after April 1, 2013, and the refinanced loan is owed to the reporting bank, if:

(i) The refinanced loan is in an amount (including funded amounts and the amount of unfunded commitments, whether irrevocable or unconditionally cancellable) of at least \$5 million;

(ii) The C&I loan being refinanced met the purpose and materiality tests (described herein) when it was originally made;

(iii) The original loan was made no more than 5 years before the refinanced loan; and

(iv) When the loan is refinanced, the borrower meets the leverage test.

When a bank acquires a C&I loan originally made on or after April 1, 2013, by another lender, it must determine whether the borrower is a higher-risk borrower as a result of the loan as soon as reasonably practicable, but not later than one year after acquisition. When a bank acquires loans from another entity on a recurring or programmatic basis, however, the bank must determine whether the borrower is a higher-risk borrower as a result of the loan as soon as is practicable, but not later than three months after the date of acquisition.

A borrower ceases to be a "higher-risk C&I borrower" only if:

(a) The borrower no longer has any C&I loans owed to the reporting bank that, when originally made, met the purpose and materiality tests described herein;

(b) The borrower has such loans outstanding owed to the reporting bank, but they have all been refinanced more than 5 years after originally being made; or

(c) The reporting bank makes a new C&I loan or refinances an existing C&I loan and the borrower no longer meets the leverage test described herein.

#### Original Amount

The original amount of a loan, including the amounts to aggregate for purposes of arriving at the original amount, as described herein, is:

(a) For C&I loans drawn down under lines of credit or loan commitments, the amount of the line of credit or loan commitment on the date of its most recent approval, extension or renewal prior to the date of the most recent Call Report; if, however, the amount currently outstanding on the loan as of the date of the bank's most recent Call Report exceeds this amount, then the original amount of the loan is the amount outstanding as of the date of the bank's most recent Call Report.

(b) For syndicated or participated C&I loans, the total amount of the loan, rather than just the syndicated or participated portion held by the individual reporting bank.

(c) For all other C&I loans (whether term or non-revolver loans), the total amount of the loan as of origination or the amount outstanding as of the date of the bank's most recent Call Report, whichever is larger.

For purposes of defining original amount and a higher-risk C&I borrower:

(a) All C&I loans that a borrower owes to the reporting bank that meet the purpose test when made, and that are made within six months of each other, must be aggregated to determine the original amount of the loan; however, only loans in the original amount of \$1 million or more must be aggregated; and further provided, that loans made before the April 1, 2013, need not be aggregated.

(b) When a C&I loan is refinanced through more than one loan, and the loans are made within six months of each other, they must be aggregated to determine the original amount.

#### Refinance

For purposes of a C&I loan, a refinance includes:

(a) Replacing an original obligation by a new or modified obligation or loan agreement;

(b) Increasing the master commitment of the line of credit (but not adjusting sub-limits under the master commitment);

(c) Disbursing additional money other than amounts already committed to the borrower;

(d) Extending the legal maturity date;

(e) Rescheduling principal or interest payments to create or increase a balloon payment;

(f) Releasing a substantial amount of collateral;

(g) Consolidating multiple existing obligations; or

(h) Increasing or decreasing the interest rate.

A refinance of a C&I loan does not include a modification or series of modifications to a commercial loan other than as described above or modifications to a commercial loan that would otherwise meet this definition of refinance, but that result in the classification of a loan as a troubled debt restructuring (TDR), as this term is defined in the glossary of the Call Report instructions, as they may be amended from time to time.

#### Purpose Test

A loan or refinance meets the purpose test if it is to finance:

(a) A buyout, defined as the purchase or repurchase by the borrower of the borrower's outstanding equity, including, but not limited to, an equity buyout or funding an Employee Stock Ownership Plan (ESOP);

(b) An acquisition, defined as the purchase by the borrower of any equity interest in another company, or the purchase of all or a substantial portion of the assets of another company; or

(c) A capital distribution, defined as a dividend payment or other transaction designed to enhance shareholder value, including, but not limited to, a repurchase of stock.

At the time of refinance, whether the original loan met the purpose test may not be easily determined by a new lender. In such a case, the new lender must use its best efforts and reasonable due diligence to determine whether the original loan met the test.

#### Materiality Test

A loan or refinance meets the materiality test if:

(a) The original amount of the loan (including funded amounts and the amount of unfunded commitments, whether irrevocable or unconditionally cancellable) equals or exceeds 20 percent of the total funded debt of the borrower; total funded debt of the borrower is to be determined as of the date of the original loan and does not include the loan to which the materiality test is being applied; or

(b) Before the loan was made, the borrower had no funded debt.

When multiple loans must be aggregated to determine the original amount, the materiality test is applied as of the date of the most recent loan.

At the time of refinance, whether the original loan met the materiality test may not be easily determined by a new lender. In such a case, the new lender must use its best efforts and reasonable due diligence to determine whether the original loan met the test.

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### Leverage Test

A borrower meets the leverage test if:

(a) The ratio of the borrower's total debt to trailing twelve-month EBITDA (commonly known as the operating leverage ratio) is greater than 4; or

(b) The ratio of the borrower's senior debt to trailing twelve-month EBITDA (also commonly known as the operating leverage ratio) is greater than 3.

EBITDA is defined as earnings before interest, taxes, depreciation, and amortization.

Total debt is defined as all interest-bearing financial obligations and includes, but is not limited to, overdrafts, borrowings, repurchase agreements (repos), trust receipts, bankers acceptances, debentures, bonds, loans (including those secured by mortgages), sinking funds, capital (finance) lease obligations (including those obligations that are convertible, redeemable or retractable), mandatory redeemable preferred and trust preferred securities accounted for as liabilities in accordance with ASC Subtopic 480-10, Distinguishing Liabilities from Equity—Overall (formerly FASB Statement No. 150, “Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity”), and subordinated capital notes. Total debt excludes pension obligations, deferred tax liabilities and preferred equity.

Senior debt includes any portion of total debt that has a priority claim on any of the borrower's assets. A priority claim is a claim that entitles the holder to priority of payment over other debt holders in bankruptcy.

When calculating either of the borrower's operating leverage ratios, the only permitted EBITDA adjustments are those specifically permitted for that borrower in the loan agreement (at the time of underwriting) and only funded amounts of lines of credit must be considered debt.

The debt-to-EBITDA ratio must be calculated using the consolidated financial statements of the borrower. If the loan is made to a subsidiary of a larger organization, the debt-to-EBITDA ratio may be calculated using the financial statements of the subsidiary or, if the parent company has unconditionally and irrevocably guaranteed the borrower's debt, using the consolidated financial statements of the parent company.

In the case of a merger of two companies or the acquisition of one or more companies or parts of companies, pro-forma debt is to be used as well as the trailing twelve-month pro-forma EBITDA for the combined companies. When calculating the trailing pro-forma EBITDA for the combined company, no adjustments are allowed for economies of scale or projected cost savings that may be realized subsequent to the acquisition unless specifically permitted for that borrower under the loan agreement.

### Exclusions

#### Cash Collateral Exclusion

To exclude a loan based on cash collateral, the cash must be in the form of a savings or time deposit held by a bank. The bank (or lead bank or agent bank in the case of a participation or syndication) must have a perfected first priority security interest, a security agreement, and a collateral assignment of the deposit account that is irrevocable for the remaining term of the loan or commitment. In addition, the bank must place a hold on the deposit account that alerts the bank's employees to an attempted withdrawal. If the cash collateral is held at another bank or at multiple banks, a security agreement must be in place and each bank must have an account control agreement in place.<sup>6</sup> For the exclusion to apply to a revolving line of credit, the cash collateral must be equal to or greater than the amount of the total loan commitment (the aggregate funded and unfunded balance of the loan).

#### Asset-Based and Floor Plan Lending Exclusions

The FDIC retains the authority to verify that banks have sound internal controls and administration practices for asset-based and floor plan loans that are excluded from a bank's reported higher-risk C&I loans and securities totals. If the bank's PFR has cited a criticism of the bank's controls or administration of its asset-based or floor plan loan portfolios in an MRA, the bank is not eligible for the asset-based or floor plan lending exclusions.

#### Asset-Based Lending Conditions

Asset-based loans (loans secured by accounts receivable and inventory) that meet all the following conditions are excluded from a bank's higher-risk C&I loan totals:

(a) The loan is managed by a loan officer or group of loan officers at the reporting bank who have experience in asset-based lending and collateral monitoring, including, but not limited to, experience in reviewing the following: Collateral reports, borrowing base certificates (which are discussed herein), collateral audit reports, loan-to-collateral values (LTV), and loan limits, using procedures common to the industry.

<sup>6</sup>An account control agreement, for purposes of this Appendix, means a written agreement between the lending bank (the secured party), the borrower, and the bank that holds the deposit account serving as collateral (the depository bank), that the depository bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the borrower (or any other party).

(b) The bank has taken, or has the legally enforceable ability to take, dominion over the borrower's deposit accounts such that proceeds of collateral are applied to the loan balance as collected. Security agreements must be in place in all cases; in addition, if a borrower's deposit account is held at a bank other than the lending bank, an account control agreement must also be in place.

(c) The bank has a perfected first priority security interest in all assets included in the borrowing base certificate.

(d) If the loan is a credit facility (revolving or term loan), it must be fully secured by self-liquidating assets such as accounts receivable and inventory.<sup>7</sup> Other non-self-liquidating assets may be part of the borrowing base, but the outstanding balance of the loan must be fully secured by the portion of the borrowing base that is composed of self-liquidating assets. Fully secured is defined as a 100 percent or lower LTV ratio after applying the appropriate discounts (determined by the loan agreement) to the collateral. If an over advance (including a seasonal over advance) causes the LTV to exceed 100 percent, the loan may not be excluded from higher-risk C&I loans owed by a higher-risk C&I borrower. Additionally, the bank must have the ability to withhold funding of a draw or advance if the loan amount exceeds the amount allowed by the collateral formula.

(e) A bank's lending policy or procedures must address the maintenance of an accounts receivable loan agreement with the borrower. This loan agreement must establish a maximum percentage advance, which cannot exceed 85 percent, against eligible accounts receivable, include a maximum dollar amount due from any one account debtor, address the financial strength of debtor accounts, and define eligible receivables. The definition of eligible receivables must consider the receivable quality, the turnover and dilution rates of receivables pledged, the aging of accounts receivable, the concentrations of debtor accounts, and the performance of the receivables related to their terms of sale.

Concentration of debtor accounts is the percentage value of receivables associated with one or a few customers relative to the total value of receivables. Turnover of receivables is the velocity at which receivables

are collected. The dilution rate is the uncollectible accounts receivable as a percentage of sales.

Ineligibles must be established for any debtor account where there is concern that the debtor may not pay according to terms. Monthly accounts receivable agings must be received in sufficient detail to allow the bank to compute the required ineligibles. At a minimum, the following items must be deemed ineligible accounts receivable:

(i) Accounts receivable balances over 90 days beyond invoice date or 60 days past due, depending upon custom with respect to a particular industry with appropriate adjustments made for dated billings;

(ii) Entire account balances where over 50 percent of the account is over 60 days past due or 90 days past invoice date;

(iii) Accounts arising from sources other than trade (*e.g.*, royalties, rebates);

(iv) Consignment or guaranteed sales;

(v) Notes receivable;

(vi) Progress billings;

(vii) Account balances in excess of limits appropriate to account debtor's credit worthiness or unduly concentrated by industry, location or customer;

(viii) Affiliate and intercompany accounts; and

(ix) Foreign accounts receivable.

(f) Loans against inventory must be made with advance rates no more than 65 percent of eligible inventory (at the lower of cost valued on a first-in, first-out (FIFO) basis or market) based on an analysis of realizable value. When an appraisal is obtained, or there is a readily determinable market price for the inventory, however, up to 85 percent of the net orderly liquidation value (NOLV) or the market price of the inventory may be financed. Inventory must be valued or appraised by an independent third-party appraiser using NOLV, fair value, or forced sale value (versus a "going concern" value), whichever is appropriate, to arrive at a net realizable value. Appraisals are to be prepared in accordance with industry standards, unless there is a readily available and determinable market price for the inventory (*e.g.*, in the case of various commodities), from a recognized exchange or third-party industry source, and a readily available market (*e.g.*, for aluminum, crude oil, steel, and other traded commodities); in that case, inventory may be valued using current market value. When relying upon current market value rather than an independent appraisal, the reporting bank's management must update the value of inventory as market prices for the product change. Valuation updates must be as frequent as needed to ensure compliance with margin requirements. In addition, appropriate mark-to-market reserves must be established to protect against excessive inventory price fluctuations. An asset has a readily identifiable and publicly available

<sup>7</sup> An asset is self-liquidating if, in the event the borrower defaults, the asset can be easily liquidated and the proceeds of the sale of the assets would be used to pay down the loan. These assets can include machinery, heavy equipment or rental equipment if the machinery or equipment is inventory for the borrower's primary business and the machinery or equipment is included in the borrowing base.

market price if the asset's price is quoted routinely in a widely disseminated publication that is readily available to the general public.

(g) A bank's lending policy or procedures must address the maintenance of an inventory loan agreement with the borrower. This loan agreement must establish a maximum percentage advance rate against acceptable inventory, address acceptable appraisal and valuation requirements, and define acceptable and ineligible inventory. Ineligibles must be established for inventory that exhibit characteristics that make it difficult to achieve a realizable value or to obtain possession of the inventory. Monthly inventory agings must be received in sufficient detail to allow the bank to compute the required ineligibles. At a minimum, ineligible inventory must include:

(i) Slow moving, obsolete inventory and items turning materially slower than industry average;

(ii) Inventory with value to the client only, which is generally work in process, but may include raw materials used solely in the client's manufacturing process;

(iii) Consigned inventory or other inventory where a perfected security interest cannot be obtained;

(iv) Off-premise inventory subject to a mechanic's or other lien; and

(v) Specialized, high technology or other inventory subject to rapid obsolescence or valuation problems.

(h) The bank must maintain documentation of borrowing base certificate reviews and collateral trend analyses to demonstrate that collateral values are actively, routinely and consistently monitored. A borrowing base certificate is a form prepared by the borrower that reflects the current status of the collateral. A new borrowing base certificate must be obtained within 30 days before or after each draw or advance on a loan. A bank is required to validate the borrowing base through asset-based tracking reports. The borrowing base validation process must include the bank requesting from the borrower a list of accounts receivable by creditor and a list of individual items of inventory and the bank certifying that the outstanding balance of the loan remains within the collateral formula prescribed by the loan agreement. Any discrepancies between the list of accounts receivable and inventory and the borrowing base certificate must be reconciled with the borrower. Periodic, but no less than annual, field examinations (audits) must also be performed by individuals who are independent of the credit origination or administration process. There must be a process in place to ensure that the bank is correcting audit exceptions.

#### Floor Plan Lending Conditions

Floor plan loans may include, but are not limited to, loans to finance the purchase of various vehicles or equipment including automobiles, boat or marine equipment, recreational vehicles (RV), motorized watersports vehicles such as jet skis, or motorized lawn and garden equipment such as tractor lawnmowers. Floor plan loans that meet all the following conditions are excluded from a bank's higher-risk C&I loan totals:

(a) The loan is managed by a loan officer or a group of loan officers at the reporting bank who are experienced in floor plan lending and monitoring collateral to ensure the borrower remains in compliance with floor plan limits and repayment requirements. Loan officers must have experience in reviewing certain items, including but not limited to: Collateral reports, floor plan limits, floor plan aging reports, vehicle inventory audits or inspections, and LTV ratios. The bank must obtain and review financial statements of the borrower (*e.g.*, tax returns, company-prepared financial statements, or dealer statements) on at least a quarterly basis to ensure that adequate controls are in place. (A "dealer statement" is the standard format financial statement issued by Original Equipment Manufacturers (OEMs) and used by nationally recognized automobile dealer floor plan lenders.)

(b) For automobile floor plans, each loan advance must be made against a specific automobile under a borrowing base certificate held as collateral at no more than 100 percent of (i) dealer invoice plus freight charges (for new vehicles) or (ii) the cost of a used automobile at auction or the wholesale value using the prevailing market guide (*e.g.*, NADA, Black Book, Blue Book). The advance rate of 100 percent of dealer invoice plus freight charges on new automobiles, and the advance rate of the cost of a used automobile at auction or the wholesale value, may only be used where there is a manufacturer repurchase agreement or an aggressive curtailment program in place that is tracked by the bank over time and subject to strong controls. Otherwise, permissible advance rates must be lower than 100 percent.

(c) Advance rates on vehicles other than automobiles must conform to industry standards for advance rates on such inventory, but may never exceed 100 percent of dealer invoice plus freight charges on new vehicles or 100 percent of the cost of a used vehicle at auction or its wholesale value.

(d) Each loan is self-liquidating (*i.e.*, if the borrower defaulted on the loan, the collateral could be easily liquidated and the proceeds of the sale of the collateral would be used to pay down the loan advance).

(e) Vehicle inventories and collateral values are closely monitored, including the

completion of regular (at least quarterly) dealership automotive or other vehicle dealer inventory audits or inspections to ensure accurate accounting for all vehicles held as collateral. The lending bank or a third party must prepare inventory audit reports and inspection reports for loans to automotive dealerships, or loans to other vehicle dealers, and the lending bank must review the reports at least quarterly. The reports must list all vehicles held as collateral and verify that the collateral is in the dealer's possession.

(f) Floor plan aging reports must be reviewed by the bank as frequently as required under the loan agreement, but no less frequently than quarterly. Floor plan aging reports must reflect specific information about each automobile or vehicle being financed (*e.g.*, the make, model, and color of the automobile or other vehicle, and origination date of the loan to finance the automobile or vehicle). Curtailment programs should be instituted where necessary and banks must ensure that curtailment payments are made on stale automotive or other vehicle inventory financed under the floor plan loan.

#### Detailed Reports

Examples of detailed reports that must be provided to the asset-based and floor plan lending bank include:

(a) Borrowing Base Certificates: Borrowing base certificates, along with supporting information, must include:

(i) The accounts receivable balance (rolled forward from the previous certificate);

(ii) Sales (reported as gross billings) with detailed adjustments for returns and allowances to allow for proper tracking of dilution and other reductions in collateral;

(iii) Detailed inventory information (*e.g.*, raw materials, work-in-process, finished goods); and

(iv) Detail of loan activity.

(b) Accounts Receivable and Inventory Detail: A listing of accounts receivable and inventory that is included on the borrowing base certificate. Monthly accounts receivable and inventory agings must be received in sufficient detail to allow the lender to compute the required ineligibles.

(c) Accounts Payable Detail: A listing of each accounts payable owed to the borrower. Monthly accounts payable agings must be received to monitor payable performance and anticipated working capital needs.

(d) Covenant Compliance Certificates: A listing of each loan covenant and the borrower's compliance with each one. Borrowers must submit Covenant Compliance Certificates, generally on a monthly or quarterly basis (depending on the terms of the loan agreement) to monitor compliance with the covenants outlined in the loan agreement. Non-compliance with any covenants must be promptly addressed.

(e) Dealership Automotive Inventory or Other Vehicle Inventory Audits or Inspections: The bank or a third party must prepare inventory audit reports or inspection reports for loans to automotive dealerships and other vehicle dealerships. The bank must review the reports at least quarterly. The reports must list all vehicles held as collateral and verify that the collateral is in the dealer's possession.

(f) Floor Plan Aging Reports: Borrowers must submit floor plan aging reports on a monthly or quarterly basis (depending on the terms of the loan agreement). These reports must reflect specific information about each automobile or other type of vehicle being financed (*e.g.*, the make, model, and color of the automobile or other type of vehicle, and origination date of the loan to finance the automobile or other type of vehicle).

### 3. Higher-Risk Consumer Loans

#### Definitions

Higher-risk consumer loans are defined as all consumer loans where, as of origination, or, if the loan has been refinanced, as of refinancing, the probability of default (PD) within two years (the two-year PD) is greater than 20 percent, excluding those consumer loans that meet the definition of a nontraditional mortgage loan.<sup>8,9</sup>

Higher-risk consumer loans exclude:

(a) The maximum amounts recoverable from the U.S. government under guarantee or insurance provisions; and

(b) Loans fully secured by cash collateral. To exclude a loan based on cash collateral,

<sup>8</sup>For the purposes of this rule, consumer loans consist of all loans secured by 1-4 family residential properties as well as loans and leases made to individuals for household, family, and other personal expenditures, as defined in the instructions to the Call Report, Schedule RC-C, as the instructions may be amended from time to time. Higher-risk consumer loans include purchased credit-impaired loans that meet the definition of higher-risk consumer loans.

<sup>9</sup>The FDIC has the flexibility, as part of its risk-based assessment system, to change the 20 percent threshold for identifying higher-risk consumer loans without further notice-and-comment rulemaking as a result of reviewing data for up to the first two reporting periods after the effective date of this rule. Before making any such change, the FDIC will analyze the potential effect of changing the PD threshold on the distribution of higher-risk consumer loans among banks and the resulting effect on assessments collected from the industry. The FDIC will provide banks with at least one quarter advance notice of any such change to the PD threshold through a Financial Institution Letter.



the cash must be in the form of a savings or time deposit held by a bank. The lending bank (or lead or agent bank in the case of a participation or syndication) must, in all cases, (including instances in which cash collateral is held at another bank or banks) have a perfected first priority security interest under applicable state law, a security agreement in place, and all necessary documents executed and measures taken as required to result in such perfection and priority. In addition, the lending bank must place a hold on the deposit account that alerts the bank's employees to an attempted withdrawal. For the exclusion to apply to a revolving line of credit, the cash collateral must be equal to, or greater than, the amount of the total loan commitment (the aggregate funded and unfunded balance of the loan).

Banks must determine the PD of a consumer loan as of the date the loan was originated, or, if the loan has been refinanced, as of the date it was refinanced. The two-year PD must be estimated using an approach that conforms to the requirements detailed herein.

#### Loans Originated or Refinanced Before April 1, 2013, and all Acquired Loans

For loans originated or refinanced by a bank before April 1, 2013, and all acquired loans regardless of the date of acquisition, if information as of the date the loan was originated or refinanced is not available, then the bank must use the oldest available information to determine the PD. If no information is available, then the bank must obtain recent, refreshed data from the borrower or other appropriate third party to determine the PD. Refreshed data is defined as the most recent data available, and must be as of a date that is no earlier than three months before the acquisition of the loan. In addition, for loans acquired on or after April 1, 2013, the acquiring bank shall have six months from the date of acquisition to determine the PD.

When a bank acquires loans from another entity on a recurring or programmatic basis, the acquiring bank may determine whether the loan meets the definition of a higher-risk consumer loan using the origination criteria and analysis performed by the original lender only if the acquiring bank verifies the information provided. Loans acquired from another entity are acquired on a recurring basis if a bank has acquired other loans from that entity at least once within the calendar year of the acquisition of the loans in ques-

tion or in the previous calendar year. If the acquiring bank cannot or does not verify the information provided by the original lender, the acquiring bank must obtain the necessary information from the borrower or other appropriate third party to make its own determination of whether the purchased assets should be classified as a higher-risk consumer loan.

#### Loans That Meet Both Higher-Risk Consumer Loans and Nontraditional Mortgage Loans Definitions

A loan that meets both the nontraditional mortgage loan and higher-risk consumer loan definitions at the time of origination, or, if the loan has been refinanced, as of refinancing, must be reported only as a nontraditional mortgage loan. If, however, the loan ceases to meet the nontraditional mortgage loan definition but continues to meet the definition of a higher-risk consumer loan, the loan is to be reported as a higher-risk consumer loan.

#### General Requirements for PD Estimation

##### Scorable Consumer Loans

Estimates of the two-year PD for a loan must be based on the observed, stress period default rate (defined herein) for loans of a similar product type made to consumers with credit risk comparable to the borrower being evaluated. While a bank may consider additional risk factors beyond the product type and credit score (*e.g.*, geography) in estimating the PD of a loan, it must at a minimum account for these two factors. The credit risk assessment must be determined using third party or internal scores derived using a scoring system that qualifies as *empirically derived, demonstrably and statistically sound* as defined in 12 CFR 202.2(p), as it may be amended from time to time, and has been approved by the bank's model risk oversight and governance process and internal audit mechanism. In the case of a consumer loan with a co-signer or co-borrower, the PD may be determined using the most favorable individual credit score.

In estimating the PD based on such scores, banks must adhere to the following requirements:

(a) The PD must be estimated as the average of the two, 24-month default rates observed from July 2007 to June 2009, and July 2009 to June 2011, where the average is calculated according to the following formula and  $DR_t$  is the observed default rate over the 24-month period beginning in July of year  $t$ :

$$PD = 1 - \sqrt{(1 - DR_{2007})(1 - DR_{2009})}$$

(b) The default rate for each 24-month period must be calculated as the number of active loans that experienced at least one default event during the period divided by the total number of active loans as of the observation date (*i.e.*, the beginning of the 24-month period). An “active” loan is defined as any loan that was open and not in default as of the observation date, and on which a payment was made within the 12 months prior to the observation date.

(c) The default rate for each 24-month period must be calculated using a stratified random sample of loans that is sufficient in size to derive statistically meaningful results for the product type and credit score (and any additional risk factors) being evaluated. The product strata must be as homogeneous as possible with respect to the factors that influence default, such that products with distinct risk characteristics are evaluated separately. The loans should be sampled based on the credit score as of the observation date, and each 24-month default rate must be calculated using a random sample of at least 1,200 active loans.

(d) Credit score strata must be determined by partitioning the entire credit score range

generated by a given scoring system into a minimum of 15 bands. While the width of the credit score bands may vary, the scores within each band must reflect a comparable level of credit risk. Because performance data for scores at the upper and lower extremes of the population distribution is likely to be limited, however, the top and bottom bands may include a range of scores that suggest some variance in credit quality.

(e) Each credit score will need to have a unique PD associated with it. Therefore, when the number of score bands is less than the number of unique credit scores (as will almost always be the case), banks must use a linear interpolation between adjacent default rates to determine the PD for a particular score. The observed default rate for each band must be assumed to correspond to the midpoint of the range for the band. For example, if one score band ranges from 621 to 625 and has an observed default rate of 4 percent, while the next lowest band ranges from 616 to 620 and has an observed default rate of 6 percent, a 620 score must be assigned a default rate of 5.2 percent, calculated as

$$\left( \frac{.04 - .06}{623 - 618} \right) \cdot (620 - 618) + .06 = .052$$

When evaluating scores that fall below the midpoint of the lowest score band or above the midpoint of the highest score band, the interpolation must be based on an assumed adjacent default rate of 1 or 0, respectively.

(f) The credit scores represented in the historical sample must have been produced by the same entity, using the same or substantially similar methodology as the methodology used to derive the credit scores to which the default rates will be applied. For example, the default rate for a particular vendor score cannot be evaluated based on the score-to-default rate relationship for a different vendor, even if the range of scores under both systems is the same. On the other hand, if the current and historical scores were produced by the same vendor using slightly different versions of the same scoring system and equivalent scores represent a similar likelihood of default, then the historical experience could be applied.

(g) A loan is to be considered in default when it is 90 + days past due, charged-off, or the borrower enters bankruptcy.

#### Unscorable Consumer Loans

For unscorable consumer loans—where the available information about a borrower is insufficient to determine a credit score—the

bank will be unable to assign a PD to the loan according to the requirements described above. If the total outstanding balance of the unscorable consumer loans of a particular product type (including, but not limited to, student loans) exceeds 5 percent of the total outstanding balance for that product type, including both foreign and domestic loans, the excess amount shall be treated as higher risk (the *de minimis* approach). Otherwise, the total outstanding balance of unscorable consumer loans of a particular product type will not be considered higher risk. The consumer product types used to determine whether the 5 percent test is satisfied shall correspond to the product types listed in the table used for reporting PD estimates.

A bank may not develop PD estimates for unscorable loans based on internal data.

If, after the origination or refinancing of the loan, an unscorable consumer loan becomes scorable, a bank must reclassify the loan using a PD estimated according to the general requirements above. Based upon that PD, the loan will be determined to be either higher risk or not, and that determination will remain in effect until a refinancing occurs, at which time the loan must be re-evaluated. An unscorable loan must be reviewed at least annually to determine if a credit score has become available.

*Alternative Methodologies*

A bank may use internally derived default rates that were calculated using fewer observations or score bands than those specified above under certain conditions. The bank must submit a written request to the FDIC either in advance of, or concurrent with, reporting under the requested approach. The request must explain in detail how the proposed approach differs from the rule specifications and the bank must provide support for the statistical appropriateness of the proposed methodology. The request must include, at a minimum, a table with the default rates and number of observations used in each score and product segment. The FDIC will evaluate the proposed methodology and may request additional information from the bank, which the bank must provide. The bank may report using its proposed approach while the FDIC evaluates the methodology. If, after reviewing the request, the FDIC determines that the bank's methodology is unacceptable, the bank will be required to amend its Call Reports and report according to the generally applicable specifications for PD estimation. The bank will be required to submit amended information for no more than the two most recently dated and filed Call Reports preceding the FDIC's determination.

*Foreign Consumer Loans*

A bank must estimate the PD of a foreign consumer loan according to the general requirements described above unless doing so would be unduly complex or burdensome (e.g., if a bank had to develop separate PD mappings for many different countries). A bank may request to use default rates calculated using fewer observations or score bands than the specified minimums, either in advance of, or concurrent with, reporting under that methodology, but must comply with the requirements detailed above for using an alternative methodology.

When estimating a PD according to the general requirements described above would be unduly complex or burdensome, a bank that is required to calculate PDs for foreign consumer loans under the requirements of the Basel II capital framework may: (1) Use the Basel II approach discussed herein, subject to the terms discussed herein; (2) submit a written request to the FDIC to use its own methodology, but may not use the methodology until approved by the FDIC; or (3) treat the loan as an unscorable consumer loan subject to the de minimis approach described above.

When estimating a PD according to the general requirements described above would be unduly complex or burdensome, a bank that is not required to calculate PDs for foreign consumer loans under the requirements of the Basel II capital framework may: (1)

Treat the loan as an unscorable consumer loan subject to the de minimis approach described above; or (2) submit a written request to the FDIC to use its own methodology, but may not use the methodology until approved by the FDIC.

When a bank submits a written request to the FDIC to use its own methodology, the FDIC may request additional information from the bank regarding the proposed methodology and the bank must provide the information. The FDIC may grant a bank tentative approval to use the methodology while the FDIC considers it in more detail. If the FDIC ultimately disapproves the methodology, the bank may be required to amend its Call Reports; however, the bank will be required to amend no more than the two most recently dated and filed Call Reports preceding the FDIC's determination. In the amended Call Reports, the bank must treat any loan whose PD had been estimated using the disapproved methodology as an unscorable domestic consumer loan subject to the de minimis approach described above.

*Basel II Approach*

A bank that is required to calculate PDs for foreign consumer loans under the requirements of the Basel II capital framework may estimate the two-year PD of a foreign consumer loan based on the one-year PD used for Basel II capital purposes.<sup>10</sup> The bank must submit a written request to the FDIC in advance of, or concurrent with, reporting under that methodology. The request must explain in detail how one-year PDs calculated under the Basel II framework are translated to two-year PDs that meet the requirements above. While the range of acceptable approaches is potentially broad, any proposed methodology must meet the following requirements:

(a) The bank must use data on a sample of loans for which both the one-year Basel II PDs and two-year final rule PDs can be calculated. The sample may contain both foreign and domestic loans.

(b) The bank must use the sample data to demonstrate that a meaningful relationship exists between the two types of PD estimates, and the significance and nature of the relationship must be determined using accepted statistical principles and methodologies. For example, to the extent that a linear relationship exists in the sample data, the

<sup>10</sup> Using these Basel II PDs for this purpose does not imply that a bank's PFR has approved use of these PDs for the Basel II capital framework. If a bank's PFR requires it to revise its Basel II PD methodology, the bank must use revised Basel II PDs to calculate (or recalculate if necessary) corresponding PDs under this Basel II approach.

bank may use an ordinary least-squares regression to determine the best linear translation of Basel II PDs to final rule PDs. The estimated equation should fit the data reasonably well based on standard statistics such as the coefficient of determination; and

(c) The method must account for any significant variation in the relationship between the two types of PD estimates that exists across consumer products based on the empirical analysis of the data. For example, if the bank is using a linear regression to determine the relationship between PD estimates, it should test whether the parameter estimates are significantly different by product type.

The bank may report using this approach (if it first notifies the FDIC of its intention to do so), while the FDIC evaluates the methodology. If, after reviewing the methodology, the FDIC determines that the methodology is unacceptable, the bank will be required to amend its Call Reports. The bank will be required to submit amended information for no more than the two most recently dated and filed Call Reports preceding the FDIC's determination.

#### Refinance

For purposes of higher-risk consumer loans, a refinance includes:

- (a) Extending new credit or additional funds on an existing loan;
- (b) Replacing an existing loan with a new or modified obligation;
- (c) Consolidating multiple existing obligations;
- (d) Disbursing additional funds to the borrower. Additional funds include a material disbursement of additional funds or, with respect to a line of credit, a material increase in the amount of the line of credit, but not a disbursement, draw, or the writing of convenience checks within the original limits of the line of credit. A material increase in the amount of a line of credit is defined as a 10 percent or greater increase in the quarter-end line of credit limit; however, a temporary increase in a credit card line of credit is not a material increase;
- (e) Increasing or decreasing the interest rate (except as noted herein for credit card loans); or
- (f) Rescheduling principal or interest payments to create or increase a balloon payment or extend the legal maturity date of the loan by more than six months.

A refinance for this purpose does not include:

- (a) A re-aging, defined as returning a delinquent, open-end account to current status without collecting the total amount of principal, interest, and fees that are contractually due, provided:

(i) The re-aging is part of a program that, at a minimum, adheres to the re-aging guidelines recommended in the interagency ap-

proved Uniform Retail Credit Classification and Account Management Policy;<sup>11</sup>

(ii) The program has clearly defined policy guidelines and parameters for re-aging, as well as internal methods of ensuring the reasonableness of those guidelines and monitoring their effectiveness; and

(iii) The bank monitors both the number and dollar amount of re-aged accounts, collects and analyzes data to assess the performance of re-aged accounts, and determines the effect of re-aging practices on past due ratios;

(b) Modifications to a loan that would otherwise meet this definition of refinance, but result in the classification of a loan as a TDR;

(c) Any modification made to a consumer loan pursuant to a government program, such as the Home Affordable Modification Program or the Home Affordable Refinance Program;

(d) Deferrals under the Servicemembers Civil Relief Act;

(e) A contractual deferral of payments or change in interest rate that is consistent with the terms of the original loan agreement (*e.g.*, as allowed in some student loans);

(f) Except as provided above, a modification or series of modifications to a closed-end consumer loan;

(g) An advance of funds, an increase in the line of credit, or a change in the interest rate that is consistent with the terms of the loan agreement for an open-end or revolving line of credit (*e.g.*, credit cards or home equity lines of credit);

(h) For credit card loans:

(i) Replacing an existing card because the original is expiring, for security reasons, or because of a new technology or a new system;

(ii) Reissuing a credit card that has been temporarily suspended (as opposed to closed);

(iii) Temporarily increasing the line of credit;

(iv) Providing access to additional credit when a bank has internally approved a higher credit line than it has made available to the customer; or

(v) Changing the interest rate of a credit card line when mandated by law (such as in the case of the Credit CARD Act).

#### 4. Nontraditional mortgage loans

<sup>11</sup> Among other things, for a loan to be considered for re-aging, the following must be true: (1) The borrower must have demonstrated a renewed willingness and ability to repay the loan; (2) the loan must have existed for at least nine months; and (3) the borrower must have made at least three consecutive minimum monthly payments or the equivalent cumulative amount.

Nontraditional mortgage loans include all residential loan products that allow the borrower to defer repayment of principal or interest and include all interest-only products, teaser rate mortgages, and negative amortizing mortgages, with the exception of home equity lines of credit (HELOCs) or reverse mortgages. A teaser-rate mortgage loan is defined as a mortgage with a discounted initial rate where the lender offers a lower rate and lower payments for part of the mortgage term. A mortgage loan is no longer considered a nontraditional mortgage loan once the teaser rate has expired. An interest-only loan is no longer considered a nontraditional mortgage loan once the loan begins to amortize.

Banks must determine whether residential loans meet the definition of a nontraditional mortgage loan as of origination, or, if the loan has been refinanced, as of refinance, as refinance is defined in this Appendix for purposes of higher-risk consumer loans. When a bank acquires a residential loan, it must determine whether the loan meets the definition of a nontraditional mortgage loan using the origination criteria and analysis performed by the original lender. If this information is unavailable, the bank must obtain refreshed data from the borrower or other appropriate third party. Refreshed data for residential loans is defined as the most recent data available. The data, however, must be as of a date that is no earlier than three months before the acquisition of the residential loan. The acquiring bank must also determine whether an acquired loan is higher risk not later than three months after acquisition.

When a bank acquires loans from another entity on a recurring or programmatic basis, however, the acquiring bank may determine whether the loan meets the definition of a nontraditional mortgage loan using the origination criteria and analysis performed by the original lender only if the acquiring bank verifies the information provided. Loans acquired from another entity are acquired on a recurring basis if a bank has acquired other loans from that entity at least once within the calendar year or the previous calendar year of the acquisition of the loans in question.

#### 5. Higher-Risk Securitizations

Higher-risk securitizations are defined as securitizations or securitization exposures (except securitizations classified as trading book), where, in aggregate, more than 50 percent of the assets backing the securitization meet either the criteria for higher-risk C & I loans or securities, higher-risk consumer loans, or nontraditional mortgage loans, except those classified as trading book. A securitization is as defined in 12 CFR part 325, Appendix A, Section II(B)(16), or in 12

CFR 324.2, as applicable, as they may be amended from time to time. A higher-risk securitization excludes the maximum amount that is recoverable from the U.S. government under guarantee or insurance provisions.

A bank must determine whether a securitization is higher risk based upon information as of the date of issuance (*i.e.*, the date the securitization is sold on a market to the public for the first time). The bank must make this determination within the time limit that would apply under this Appendix if the bank were directly acquiring loans or securities of the type underlying the securitization. In making the determination, a bank must use one of the following methods:

(a) For a securitization collateralized by a static pool of loans, whose underlying collateral changes due to the sale or amortization of these loans, the 50 percent threshold is to be determined based upon the amount of higher-risk assets, as defined in this Appendix, owned by the securitization on the date of issuance of the securitization.

(b) For a securitization collateralized by a dynamic pool of loans, whose underlying collateral may change by the purchase of additional assets, including purchases made during a ramp-up period, the 50 percent threshold is to be determined based upon the highest amount of higher-risk assets, as defined in this Appendix, allowable under the portfolio guidelines of the securitization.

A bank is not required to evaluate a securitization on a continuous basis when the securitization is collateralized by a dynamic pool of loans; rather, the bank is only required to evaluate the securitization once.

A bank is required to use the information that is reasonably available to a sophisticated investor in reasonably determining whether a securitization meets the 50 percent threshold. Information reasonably available to a sophisticated investor includes, but is not limited to, offering memoranda, indentures, trustee reports, and requests for information from servicers, collateral managers, issuers, trustees, or similar third parties. When determining whether a revolving trust or similar securitization meets the threshold, a bank may use established criteria, model portfolios, or limitations published in the offering memorandum, indenture, trustee report, or similar documents.

Sufficient information necessary for a bank to make a definitive determination may not, in every case, be reasonably available to the bank as a sophisticated investor. In such a case, the bank may exercise its judgment in making the determination. In some cases, the bank need not rely upon all of the aforementioned pieces of information to make a higher-risk determination if fewer

documents provide sufficient data to make the determination.

In cases in which a securitization is required to be consolidated on the balance sheet as a result of SFAS 166 and SFAS 167, and a bank has access to the necessary information, a bank may opt for an alternative method of evaluating the securitization to determine whether it is higher risk. The bank may evaluate individual loans in the securitization on a loan-by-loan basis and only report as higher risk those loans that meet the definition of a higher-risk asset; any loan within the securitization that does not meet the definition of a higher-risk asset need not be reported as such. When making this evaluation, the bank must follow the provisions of section I.B herein. Once a bank evaluates a securitization for higher-risk asset designation using this alternative evaluation method, it must continue to evaluate all securitizations that it has consolidated on the balance sheet as a result of SFAS 166 and SFAS 167, and for which it has the required information, using the alternative evaluation method. For securitizations for which the bank does not have access to information on a loan-by-loan basis, the bank must determine whether the securitization meets the 50 percent threshold in the manner previously described for other securitizations.

#### B. Application of Definitions

Section I of this Appendix applies to:

- (1) All construction and land development loans, whenever originated or purchased;
- (2) C&I loans (as that term is defined in this Appendix) owed to a reporting bank by a higher-risk C&I borrower (as that term is defined in this Appendix) and all securities issued by a higher-risk C&I borrower, except securitizations of C&I loans, that are owned by the reporting bank;
- (3) Consumer loans (as defined in this Appendix), except securitizations of consumer loans, whenever originated or purchased;
- (4) Securitizations of C&I and consumer loans (as defined in this Appendix) issued on or after April 1, 2013, including those securitizations issued on or after April 1, 2013, that are partially or fully collateralized by loans originated before April 1, 2013.

For C&I loans that are either originated or refinanced by a reporting bank before April 1, 2013, or purchased by a reporting bank be-

fore April 1, 2013, where the loans are owed to the reporting bank by a borrower that does not meet the definition of a higher-risk C&I borrower as that term is defined in this Appendix (which requires, among other things, that the borrower have obtained a C&I loan or refinanced an existing C&I loan on or after April 1, 2013) and securities purchased before April 1, 2013, that are issued by an entity that does not meet the definition of a higher-risk C&I borrower, as that term is defined in this Appendix, banks must continue to use the transition guidance in the September 2012 Call Report instructions to determine whether to report the loan or security as a higher-risk asset for purposes of the higher-risk assets to Tier 1 capital and reserves ratio. A bank may opt to apply the definition of higher-risk C&I loans and securities in this Appendix to all of its C&I loans and securities, but, if it does so, it must also apply the definition of a higher-risk C&I borrower in this Appendix without regard to when the loan is originally made or refinanced (*i.e.*, whether made or refinanced before or after April 1, 2013).

For consumer loans (other than securitizations of consumer loans) originated or purchased prior to April 1, 2013, a bank must determine whether the loan met the definition of a higher-risk consumer loan no later than June 30, 2013.

For all securitizations issued before April 1, 2013, banks must either (1) continue to use the transition guidance or (2) apply the definitions in this Appendix to all of its securitizations. If a bank applies the definition of higher-risk C&I loans and securities in this Appendix to its securitizations, it must also apply the definition of a higher-risk C&I borrower in this Appendix to all C&I borrowers without regard to when the loans to those borrowers were originally made or refinanced (*i.e.*, whether made or refinanced before or after April 1, 2013).

#### II. GROWTH-ADJUSTED PORTFOLIO CONCENTRATION MEASURE

The *growth-adjusted concentration measure* is the sum of the values of concentrations in each of the seven portfolios, each of the values being first adjusted for risk weights and growth. The product of the risk weight and the concentration ratio is first squared and then multiplied by the growth factor. The measure is calculated as:

$$N_i = \sum_{k=1}^7 \left[ w_k * \left( \frac{\text{Amount of exposure}_{i,k}}{\text{Tier 1 Capital} + \text{Reserves}_i} \right) \right]^2 * g_k$$

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Where:

N is bank *i*'s growth-adjusted portfolio concentration measure;<sup>12</sup>

*k* is a portfolio;

*g* is a growth factor for bank *i*'s portfolio *k*; and,

w is a risk weight for portfolio *k*.

The seven portfolios (k) are defined based on the Call Report/TFR data and they are:

- Construction and land development loans;
- Other commercial real estate loans;
- First-lien residential mortgages and non-agency residential mortgage-backed securities (excludes CMOs, REMICS, CMO and REMIC residuals, and stripped MBS issued by non-U.S. government issuers for which

the collateral consists of MBS issued or guaranteed by U.S. government agencies);

- Closed-end junior liens and home equity lines of credit (HELOCs);
- Commercial and industrial loans;
- Credit card loans; and
- Other consumer loans.<sup>13 14</sup>

The growth factor, *g*, is based on a three-year merger-adjusted growth rate for a given portfolio; *g* ranges from 1 to 1.2 where a 20 percent growth rate equals a factor of 1 and an 80 percent growth rate equals a factor of 1.2.<sup>15</sup> For growth rates less than 20 percent, *g* is 1; for growth rates greater than 80 percent, *g* is 1.2. For growth rates between 20 percent and 80 percent, the growth factor is calculated as:

$$g_{i,k} = 1 + \left[ \frac{1}{3} (G_{i,k} - 0.20) \right]$$

Where:

$$G_{i,k} = \frac{V_{i,k,t}}{V_{i,k,t-12}} - 1,$$

V is the portfolio amount as reported on the Call Report/TFR and t is the quarter for which the assessment is being determined.

The risk weight for each portfolio reflects relative peak loss rates for banks at the 90th percentile during the 1990-2009 period.<sup>16</sup> These loss rates were converted into equivalent risk weights as shown in Table C.1.

TABLE C.1—90TH PERCENTILE ANNUAL LOSS RATES FOR 1990–2009 PERIOD AND CORRESPONDING RISK WEIGHTS

| Portfolio                                       | Loss rates<br>(90th percentile) | Risk weights |
|---|---------------------------------|--------------|
| First-Lien Mortgages .....                      | 2.3%                            | 0.5          |
| Second/Junior Lien Mortgages .....              | 4.6%                            | 0.9          |
| Commercial and Industrial (C&I) Loans .....     | 5.0%                            | 1.0          |
| Construction and Development (C&D) Loans .....  | 15.0%                           | 3.0          |
| Commercial Real Estate Loans, excluding C&D ... | 4.3%                            | 0.9          |
| Credit Card Loans .....                         | 11.8%                           | 2.4          |

<sup>12</sup>The growth-adjusted portfolio concentration measure is rounded to two decimal points.

<sup>13</sup>All loan concentrations should include the fair value of purchased credit impaired loans.

<sup>14</sup>Each loan concentration category should exclude the amount of loans recoverable from the U.S. government under guarantee or insurance provisions.

<sup>15</sup>The growth factor is rounded to two decimal points.

<sup>16</sup>The risk weights are based on loss rates for each portfolio relative to the loss rate for C&I loans, which is given a risk weight of 1. The peak loss rates were derived as follows. The loss rate for each loan category for each bank with over \$5 billion in total assets was calculated for each of the last twenty calendar years (1990–2009). The highest value of the 90th percentile of each loan category over the twenty year period was selected as the peak loss rate.

TABLE C.1—90TH PERCENTILE ANNUAL LOSS RATES FOR 1990–2009 PERIOD AND CORRESPONDING RISK WEIGHTS—Continued

| Portfolio                  | Loss rates (90th percentile) | Risk weights |
|----------------------------|------------------------------|--------------|
| Other Consumer Loans ..... | 5.9%                         | 1.2          |

[77 FR 66017, Oct. 31, 2013, as amended at 78 FR 55594, Sept. 10, 2013]

#### APPENDIX D TO SUBPART A OF PART 327—DESCRIPTION OF THE LOSS SEVERITY MEASURE

The loss severity measure applies a standardized set of assumptions to an institution's balance sheet to measure possible losses to the FDIC in the event of an institution's failure. To determine an institution's loss severity rate, the FDIC first applies assumptions about uninsured deposit and other unsecured

liability runoff, and growth in insured deposits, to adjust the size and composition of the institution's liabilities. Assets are then reduced to match any reduction in liabilities.<sup>1</sup> The institution's asset values are then further reduced so that the Leverage ratio reaches 2 percent.<sup>2</sup> In both cases, assets are adjusted pro rata to preserve the institution's asset composition. Assumptions regarding loss rates at failure for a given asset category and the extent of secured liabilities are then applied to estimated assets and liabilities at failure to determine whether the institution has enough unencumbered assets to cover domestic deposits. Any projected shortfall is divided by current domestic deposits to obtain an end-of-period loss severity ratio. The loss severity measure is an average loss severity ratio for the three most recent quarters of data available.

#### Runoff and Capital Adjustment Assumptions

Table D.1 contains run-off assumptions.

TABLE D.1—RUNOFF RATE ASSUMPTIONS

| Liability type  | Runoff rate* (percent) |
|---|------------------------|
| Insured Deposits .....  | (10)                   |
| Uninsured Deposits .....                                      | 58                     |
| Foreign Deposits .....  | 80                     |
| Federal Funds Purchased .....                                 | 100                    |
| Repurchase Agreements .....                                   | 75                     |
| Trading Liabilities .....                                     | 50                     |
| Unsecured Borrowings <= 1 Year .....                          | 75                     |
| Secured Borrowings <= 1 Year .....                            | 25                     |
| Subordinated Debt and Limited Liability Preferred Stock ..... | 15                     |

\* A negative rate implies growth.

Given the resulting total liabilities after runoff, assets are then reduced pro rata to preserve the relative amount of assets in each of the following asset categories and to achieve a Leverage ratio of 2 percent:

- Cash and Interest Bearing Balances;
- Trading Account Assets;
- Federal Funds Sold and Repurchase Agreements;
- Treasury and Agency Securities;
- Municipal Securities;
- Other Securities;

- Construction and Development Loans;
- Nonresidential Real Estate Loans;
- Multifamily Real Estate Loans;
- 1-4 Family Closed-End First Liens;
- 1-4 Family Closed-End Junior Liens;
- Revolving Home Equity Loans; and
- Agricultural Real Estate Loans.

#### Recovery Value of Assets at Failure

Table D.2 shows loss rates applied to each of the asset categories as adjusted above.

TABLE D.2—ASSET LOSS RATE ASSUMPTIONS

| Asset category                           | Loss rate (percent) |
|--|---------------------|
| Cash and Interest Bearing Balances ..... | 0.0                 |
| Trading Account Assets .....             | 0.0                 |

<sup>1</sup>In most cases, the model would yield reductions in liabilities and assets prior to failure. Exceptions may occur for institutions primarily funded through insured deposits, which the model assumes to grow prior to failure.

<sup>2</sup>Of course, in reality, runoff and capital declines occur more or less simultaneously as an institution approaches failure. The loss severity measure assumptions simplify this process for ease of modeling.



TABLE D.2—ASSET LOSS RATE ASSUMPTIONS—Continued

| Asset category                                     | Loss rate<br>(percent) |
|--|------------------------|
| Federal Funds Sold and Repurchase Agreements ..... | 0.0                    |
| Treasury and Agency Securities .....               | 0.0                    |
| Municipal Securities .....                         | 10.0                   |
| Other Securities .....                             | 15.0                   |
| Construction and Development Loans .....           | 38.2                   |
| Nonresidential Real Estate Loans .....             | 17.6                   |
| Multifamily Real Estate Loans .....                | 10.8                   |
| 1–4 Family Closed-End First Liens .....            | 19.4                   |
| 1–4 Family Closed-End Junior Liens .....           | 41.0                   |
| Revolving Home Equity Loans .....                  | 41.0                   |
| Agricultural Real Estate Loans .....               | 19.7                   |
| Agricultural Loans .....                           | 11.8                   |
| Commercial and Industrial Loans .....              | 21.5                   |
| Credit Card Loans .....                            | 18.3                   |
| Other Consumer Loans .....                         | 18.3                   |
| All Other Loans .....                              | 51.0                   |
| Other Assets .....                                 | 75.0                   |

*Secured Liabilities at Failure*

Federal home loan bank advances, secured federal funds purchased and repurchase agreements are assumed to be fully secured.

Foreign deposits are treated as fully secured because of the potential for ring fencing.

*Loss Severity Ratio Calculation*

The FDIC's loss given failure (LGD) is calculated as:

$$LGD = \frac{\text{Insured Deposits}_{\text{Failure}}}{\text{Domestic Deposits}_{\text{Failure}}} \times (\text{Domestic Deposits}_{\text{Failure}} - \text{Recovery Value of Assets}_{\text{Failure}} + \text{Secured Liabilities}_{\text{Failure}})$$

An end-of-quarter loss severity ratio is LGD divided by total domestic deposits at quarter-end and the loss severity measure for the scorecard is an average of end-of-period loss severity ratios for three most recent quarters.

[76 FR 10724, Feb. 25, 2011]

### Subpart B—Implementation of One-Time Assessment Credit

AUTHORITY: 12 U.S.C. 1817(e)(3).

SOURCE: 71 FR 61383, Oct. 18, 2006, unless otherwise noted.

#### § 327.30 Purpose and scope.

(a) *Scope.* This subpart B of part 327 implements the one-time assessment credit required by section 7(e)(3) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(e)(3) and applies to insured depository institutions.

(b) *Purpose.* This subpart B of part 327 sets forth the rules for:

(1) Determination of the aggregate amount of the one-time credit;

(2) Identification of eligible insured depository institutions;

(3) Determination of the amount of each eligible institution's December 31, 1996 assessment base ratio and one-time credit;

(4) Transferability of credit amounts among insured depository institutions;

(5) Application of such credit amounts against assessments; and

(6) An institution's request for review of the FDIC's determination of a credit amount.

#### § 327.31 Definitions.

For purposes of this subpart and subpart C:

(a) *The average assessment rate* for any assessment period means the aggregate assessment charged all insured depository institutions for that period divided by the aggregate assessment base for that period.

(b) *Board* means the Board of Directors of the FDIC.

(c) *De facto rule* means any transaction in which an insured depository

institution assumes substantially all of the deposit liabilities and acquires substantially all of the assets of any other insured depository institution at the time of the transaction.

(d) *An eligible insured depository institution:*

(1) Means an insured depository institution that:

(i) Was in existence on December 31, 1996, and paid a deposit insurance assessment before December 31, 1996; or

(ii) Is a successor to an insured depository institution referred to in paragraph (d)(1)(i) of this section; and

(2) does not include an institution if its insured status has terminated as of or after the effective date of this regulation.

(e) *Merger* means any transaction in which an insured depository institution merges or consolidates with any other insured depository institution. Notwithstanding part 303, subpart D, for purposes of this subpart B and subpart C of this part, *merger* does not include transactions in which an insured depository institution either directly or indirectly acquires the assets of, or assumes liability to pay any deposits made in, any other insured depository institution, but there is not a legal merger or consolidation of the two insured depository institutions.

(f) *Resulting institution* refers to the acquiring, assuming, or resulting institution in a merger.

(g) *Successor* means a resulting institution or an insured depository institution that acquired part of another insured depository institution's 1996 assessment base ratio under paragraph 327.33(c) of this subpart under the *de facto* rule.

**§ 327.32 Determination of aggregate credit amount.**

The aggregate amount of the one-time credit shall equal \$4,707,580,238.19.

**§ 327.33 Determination of eligible institution's credit amount.**

(a) Subject to paragraph (c) of this section, allocation of the one-time credit shall be based on each eligible insured depository institution's 1996 assessment base ratio.

(b) Subject to paragraph (c) of this section, an eligible insured depository

institution's 1996 assessment base ratio shall consist of:

(1) Its assessment base as of December 31, 1996 (adjusted as appropriate to reflect the assessment base of December 31, 1996, of all institutions for which it is the successor), as the numerator; and

(2) The combined aggregate assessment bases of all eligible insured depository institutions, including any successor institutions, as of December 31, 1996, as the denominator.

(c) If an insured depository institution is a successor to an eligible insured depository institution under the *de facto* rule, as defined in paragraph 327.31(c) of this subpart, the successor and the eligible insured depository institution will divide the eligible insured depository institution's 1996 assessment base ratio pro rata, based on the deposit liabilities assumed in the transaction. In any subsequent transaction involving an insured depository institution that previously engaged in a transaction to which the *de facto* rule applied, the insured depository institution may not be deemed to have transferred more than its remaining 1996 assessment base ratio. If the transferring institution is no longer an insured depository institution after the transfer, the last successor will acquire the transferring institution's remaining 1996 assessment base ratio.

**§ 327.34 Transferability of credits.**

(a) Any remaining amount of the one-time assessment credit and the associated 1996 assessment base ratio shall transfer to a successor of an eligible insured depository institution.

(b) Prior to the final determination of its 1996 assessment base and one-time assessment credit amount by the FDIC, an eligible insured depository institution may enter into an agreement to transfer any portion of such institution's one-time credit amount and 1996 assessment base ratio to another insured depository institution. The parties to the agreement shall notify the FDIC's Division of Finance and submit a written agreement, signed by legal representatives of both institutions. The parties must include documentation stating that each representative

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has the legal authority to bind the institution. The adjustment to credit amount and the associated 1996 assessment base ratio shall be made in the next assessment invoice that is sent at least 10 days after the FDIC's receipt of the written agreement.

(c) An eligible insured depository institution may enter into an agreement after the final determination of its 1996 assessment base ratio and one-time credit amount by the FDIC to transfer any portion of such institution's one-time credit amount to another insured depository institution. The parties to the agreement shall notify the FDIC's Division of Finance and submit a written agreement, signed by legal representatives of both institutions. The parties must include documentation stating that each representative has the legal authority to bind the institution. The adjustment to the credit amount shall be made in the next assessment invoice that is sent at least 10 days after the FDIC's receipt of the written agreement.

### § 327.35 Application of credits.

(a) Subject to the limitations in paragraph (b) of this section, the amount of an eligible insured depository institution's one-time credit shall be applied to the maximum extent allowable by law against that institution's quarterly assessment payment under subpart A of this part, until the institution's credit is exhausted.

(b) The following limitations shall apply to the application of the credit against assessment payments.

(1) For assessments that become due for assessment periods beginning in calendar years 2008, 2009, and 2010, the credit may not be applied to more than 90 percent of the quarterly assessment.

(2) For an insured depository institution that exhibits financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not at least adequately capitalized (as defined pursuant to section 38 of the Federal Deposit Insurance Act) at the beginning of an assessment period, the amount of the credit that may be applied against the institution's quarterly assessment for that period shall not exceed the amount that the institution would

have been assessed if it had been assessed at the average assessment rate for all insured institutions for that period. The FDIC shall determine the average assessment rate for an assessment period based upon its best estimate of the average rate for the period. The estimate shall be made using the best information available, but shall be made no earlier than 30 days and no later than 20 days prior to the payment due date for the period.

(3) If the FDIC has established a restoration plan pursuant to section 7(b)(3)(E) of the Federal Deposit Insurance Act, the FDIC may elect to restrict the application of credit amounts, in any assessment period, up to the lesser of:

(i) The amount of an insured depository institution's assessment for that period; or

(ii) The amount equal to 3 basis points of the institution's assessment base.

### § 327.36 Requests for review of credit amount.

(a)(1) As soon as practicable after the publication date of this rule, the FDIC shall notify each insured depository institution by FDICconnect or mail of its 1996 assessment base ratio and credit amount in a Statement of One-Time Credit ("Statement"), if any. An insured depository institution may submit a request for review of the FDIC's determination of the institution's 1996 assessment base ratio or credit amount as shown on the Statement within 30 days after the effective date of this rule. Such review may be requested if:

(i) The institution disagrees with a determination as to eligibility for the credit that relates to that institution's credit amount;

(ii) The institution disagrees with the calculation of the credit as stated on the Statement; or

(iii) The institution believes that the 1996 assessment base ratio attributed to the institution on the Statement does not fully or accurately reflect its own 1996 assessment base or appropriate adjustments for successors.

(2) If an institution does not submit a timely request for review, that institution is barred from subsequently requesting review of its credit amount, subject to paragraph (e) of this section.

(b)(1) An insured depository institution may submit a request for review of the FDIC's adjustment to the credit amount in a quarterly invoice within 30 days of the date on which the FDIC provides the invoice. Such review may be requested if:

(i) The institution disagrees with the calculation of the credit as stated on the invoice; or

(ii) The institution believes that the 1996 assessment base ratio attributed to the institution due to the adjustment to the invoice does not fully or accurately reflect appropriate adjustments for successors since the last quarterly invoice.

(2) If an institution does not submit a timely request for review, that institution is barred from subsequently requesting review of its credit amount, subject to paragraph (e) of this section.

(c) The request for review shall be submitted to the Division of Finance and shall provide documentation sufficient to support the change sought by the institution. At the time of filing with the FDIC, the requesting institution shall notify, to the extent practicable, any other insured depository institution that would be directly and materially affected by granting the request for review and provide such institution with copies of the request for review, the supporting documentation, and the FDIC's procedures for requests under this subpart. In addition, the FDIC also shall make reasonable efforts, based on its official systems of records, to determine that such institutions have been identified and notified.

(d) During the FDIC's consideration of the request for review, the amount of credit in dispute shall not be available for use by any institution.

(e) Within 30 days of being notified of the filing of the request for review, those institutions identified as potentially affected by the request for review may submit a response to such request, along with any supporting documentation, to the Division of Finance, and shall provide copies to the request-

ing institution. If an institution that was notified under paragraph (c) does not submit a response to the request for review, that institution may not:

(1) Subsequently dispute the information submitted by other institutions on the transaction(s) at issue in the review process; or

(2) Appeal the decision by the Director of the Division of Finance.

(f) If additional information is requested of the requesting or affected institutions by the FDIC, such information shall be provided by the institution within 21 days of the date of the FDIC's request for additional information.

(g) Any institution submitting a timely request for review will receive a written response from the FDIC's Director of the Division of Finance, (or his or her designee), notifying the requesting and affected institutions of the determination of the Director as to whether the requested change is warranted. Notice of the procedures applicable to appeals under paragraph (h) of this section will be included with the Director's written determination. Whenever feasible, the FDIC will provide the institution with the aforesaid written response the later of:

(1) Within 60 days of receipt by the FDIC of the request for revision;

(2) If additional institutions have been notified by the requesting institution or the FDIC, within 60 days of the date of the last response to the notification; or

(3) If additional information has been requested by the FDIC, within 60 days of receipt of the additional information.

(h) Subject to paragraph (e) of this section, the insured depository institution that requested review under this section, or an insured depository institution materially affected by the Director's determination, that disagrees with that determination may appeal to the FDIC's Assessment Appeals Committee on the same grounds as set forth under paragraph (a) of this section. Any such appeal must be submitted within 30 calendar days from the date of the Director's written determination. Notice of the procedures applicable to appeals under this section will be included with the Director's

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written determination. The decision of the Assessment Appeals Committee shall be the final determination of the FDIC.

(i) Any adjustment to an institution's credits resulting from a determination by the Director of the FDIC's Assessment Appeals Committee shall be reflected in the institution's next assessment invoice. The adjustment to credits shall affect future assessments only and shall not result in a retroactive adjustment of assessment amounts owed for prior periods.

### Subpart C—Implementation of Dividend Requirements

AUTHORITY: 12 U.S.C. 1817(e)(2), (4).

SOURCE: 73 FR 73162, Dec. 2, 2008, unless otherwise noted.

#### § 327.50 Dividends.

(a) *Suspension of dividends.* The Board will suspend dividends indefinitely whenever the DIF reserve ratio exceeds 1.50 percent at the end of any year.

(b) *Assessment rate schedule if DIF reserve ratio exceeds 1.50 Percent.* In lieu of dividends, when the DIF reserve ratio exceeds 1.50 percent, assessment rates shall be determined as set forth in section 327.10, as appropriate.

[76 FR 10725, Feb. 25, 2011]

### PART 328—ADVERTISEMENT OF MEMBERSHIP

Sec.

328.0 Scope.

328.1 Official sign.

328.2 Display and procurement of official sign.

328.3 Official advertising statement requirements.

328.4 Prohibition against receiving deposits at same teller station or window as non-insured institution.

AUTHORITY: 12 U.S.C. 1818(a), 1819 (Tenth), 1828(a).

SOURCE: 72 FR 66102, Nov. 13, 2006, unless otherwise noted.

#### § 328.0 Scope.

Part 328 describes the official sign of the FDIC and prescribes its use by insured depository institutions. It also prescribes the official advertising statement insured depository institutions must include in their advertisements. For purposes of part 328, the term “insured depository institution” includes insured branches of a foreign depository institution. Part 328 does not apply to non-insured offices or branches of insured depository institutions located in foreign countries.

#### § 328.1 Official sign.

(a) The official sign referred to in this part shall be 7” by 3” in size, with black lettering and gold background, and of the following design:

